

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: OFFICE OF THE GOVERNOR, ) OEIG Case #15-02180  
CENTRAL MANAGEMENT SERVICES, )  
TERRY SCHIERHOLZ, )  
JOSH POTTS, )  
DEBORAH HENSEY, and )  
MICHAEL HOFFMAN )

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20S-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General, and to the identified respondents at their last known addresses.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

**I. INTRODUCTION AND BACKGROUND**

**A. *Rutan* Background**

The Supreme Court has recognized limits on government officials’ power to make employment decisions based on an individual’s political affiliation. Specifically, the *Elrod-Branti-Rutan* line of cases have held that state and local governments cannot hire, fire, transfer, or promote individuals based on their political affiliation, unless the hiring authority could demonstrate that

party affiliation was an appropriate requirement for the effective performance of the public office involved.<sup>1</sup>

Following the *Rutan* decision, the State of Illinois categorized State positions as either “*Rutan-covered*” or “*Rutan-exempt*.” *Rutan-covered* positions are positions for which political affiliation could not be considered in making employment decisions. In contrast, *Rutan-exempt* positions are positions where the hiring authority may base its employment decision on party affiliation.<sup>2</sup> *Rutan-exempt* positions frequently consist of policymaking, confidential, and spokesperson responsibilities.<sup>3</sup>

In order to ensure that employment decisions for *Rutan-covered* positions were based on meritorious factors, the Governor’s Office, through its Administrative Orders, developed competitive hiring procedures. Under the Administrative Orders, the Department of Central Management Services (CMS) is responsible for reviewing all newly-created positions to determine whether each position is *Rutan-covered* or *Rutan-exempt*.<sup>4</sup>

## **B. IDOT Staff Assistant Investigation -- OEIG Case No. 11-01567**

On June 12, 2014, the OEIG issued a report in Case No. 11-01567, making findings of the OEIG’s extensive investigation into hiring and employment improprieties regarding Illinois Department of Transportation’s (IDOT) Staff Assistant position.<sup>5</sup> The improperly deemed *Rutan-exempt* Staff Assistant position was used an inordinate number of times over approximately ten years to hire individuals, who were then assigned job duties that did not justify the *Rutan-exempt* status.

The OEIG’s investigation found that after CMS was provided with IDOT’s Staff Assistant position description, CMS concluded, based solely on the content of the position description, that the Staff Assistant position was *Rutan-exempt*. As a result, CMS’s determination allowed IDOT to fill the Staff Assistant position based on political affiliation or other non-merit based considerations. However, the duties performed by most of the Staff Assistants were not in keeping with their *Rutan-exempt* status; instead, they were performing *Rutan-covered* duties.

In light of the Report’s findings, numerous remedial actions resulted, among them: the abolishment of the Staff Assistant position; additional *Rutan-related* training; and the appointment

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<sup>1</sup> See *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Branti v. Finkel*, 445 U.S. 507, 518 (1980); and *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 75 (1990).

<sup>2</sup> *Branti*, 445 U.S. at 518.

<sup>3</sup> The Supreme Court in *Elrod* allowed patronage dismissals of persons in policymaking or confidential positions. *Elrod*, 427 U.S. at 367-68; see also *Thompson v. Illinois Dept. of Professional Regulation*, 300 F.3d 750, 756 (7th Cir. 2002) (“policymaking powers or confidential relationships . . . accurately describe the vast majority of offices that fall within the realm of legitimate patronage”). Moreover, *Branti* stated that spokesperson duties are frequently a characteristic of a *Rutan-exempt* position where an elected official “may appropriately believe that the official duties of various assistants who help him write speeches, explain his views to the press, or communicate with the legislature cannot be performed effectively unless those persons share his political beliefs and party commitments.” *Branti*, 445 U.S. at 518.

<sup>4</sup> See Administrative Orders No. 2 (1990), No. 1 (1991), and No. 2 (2009).

<sup>5</sup> The final report for Case No. 11-01567 was published on August 22, 2014.

of a federal court-appointed monitor to address and remedy IDOT's hiring and employment improprieties.

### C. *Shakman* Lawsuit

In 1969, *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. 1969) (*Shakman* lawsuit), was filed against various defendants, including the State of Illinois, by Michael Shakman and other plaintiffs.<sup>6</sup> As a result of that lawsuit, on May 5, 1972, the court entered an order enjoining then Governor Richard B. Ogilvie, individually, and as Governor for the State of Illinois, and his successors in office, among others, from “conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor” (1972 Decree).<sup>7</sup> The 1972 Decree covered non-exempt employment positions within the State of Illinois.

More recently, investigations into the misuse of IDOT's Staff Assistant position prompted the *Shakman* plaintiffs to seek relief from the court for violations of the 1972 Decree.<sup>8</sup> In 2014, plaintiffs filed a motion alleging that IDOT improperly created or reclassified numerous Staff Assistant positions as *Rutan*-exempt even though the employees in this position were performing *Rutan*-covered work.<sup>9</sup> Plaintiffs sought, in part, the appointment of a Special Master to investigate and recommend appropriate reforms in the employment practices for *Rutan*-covered positions under the jurisdiction of the Governor.<sup>10</sup>

On November 18, 2014, the United States District Court for the Northern District of Illinois entered a written order appointing a Special Master, Noelle Brennan, for the purpose of compelling IDOT to comply with State hiring practices.<sup>11</sup> More recently, in a “Memorandum Opinion and Order” entered on November 28, 2016, the court expanded the authority of the Special Master to review *all* positions under the jurisdiction of the Governor that were identified as *Rutan*-exempt.<sup>12</sup> The Special Master was tasked to develop an approved and comprehensive list of all exempt positions across all agencies in the State, and develop procedures for correcting and revising the exempt list.<sup>13</sup> Part of the State's initial work on this prong of the Special Master's review is to provide lists “of each position classified under the provisions of Section[] ... 4(d)(1), 4(d)(2) and

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<sup>6</sup> See *Shakman, et al. v. Democratic Organization of Cook County, et al.*, 310 F. Supp. 1398 (N.D. Ill. 1969) (dismissed for lack of standing), *rev'd*, 435 F.2d 267 (7th Cir. 1970).

<sup>7</sup> Judgment at ¶ E(1), *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. May 5, 1972).

<sup>8</sup> Plaintiffs' Amended Motion for Entry of Supplemental Relief with Respect to the Governor of Illinois, *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. April 22, 2014).

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> Order Appointing a Special Master for IDOT, *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. November 18, 2014).

<sup>12</sup> Memorandum Opinion and Order at 2, *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. November 28, 2016).

<sup>13</sup> *Id.* at 6.

4(d)(3) of the Illinois Personnel Code within each such agency, board, commission and other state body that the Governor contends should be an Exempt Position.”<sup>14</sup>

#### **D. The Role and Structure of CMS**

CMS provides a broad range of programs and services to State agencies and the public including: human resources and employee benefits, information technology and telecommunications, media and marketing, property and facilities management, procurement and vehicle fleet management.<sup>15</sup> CMS’s stated mission is “to ensure the accountable, efficient, transparent and effective delivery of a broad range of programs and services to state agencies, the Illinois business community, local governments, and the citizens of Illinois, while maintaining the lowest impact on taxpayer dollars.”<sup>16</sup>

CMS has a number of Bureaus that focus on particular services and programs. Each Bureau is overseen by a Deputy Director who typically reports directly either to the Assistant Director or the Director of CMS. The Bureau of Property Management at CMS (BOPM) manages and maintains many State-owned buildings and secures space by lease or purchase to meet the needs of State agencies.<sup>17</sup> The Bureau of Personnel at CMS, in part, develops and administers the Illinois Personnel Code.<sup>18</sup>

#### **E. Illinois Personnel Code Exempt Positions**

The Illinois Personnel Code is designed “to establish for the government of the State of Illinois a system of personnel administration under the Governor, based on merit principles and scientific methods.”<sup>19</sup> CMS is the designated State agency responsible for administering the Personnel Code.<sup>20</sup>

As discussed above, CMS has a duty under the Administrative Orders issued by the Governor’s Office following the *Rutan* decision to conduct a technical review of all newly-created State positions to determine whether each position is *Rutan*-covered, and thus subject to the competitive interview and selection procedures, or *Rutan*-exempt, for which such procedures need not be followed. In making this determination, CMS generally considers the position’s authority to: develop and implement agency policies; access confidential agency information; and speak on behalf of the agency or bind the agency to a course of action. CMS also examines the location of the position within the organizational hierarchy of the agency and whether the position reports to a *Rutan*-covered or *Rutan*-exempt supervisor.<sup>21</sup> In addition to its duty to make *Rutan* determinations based on the above-identified factors, in its role as Personnel Code administrator, CMS is responsible for overseeing personnel matters within State agencies, including ensuring

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<sup>14</sup> Agreed Order at 2, *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. May 1, 2017).

<sup>15</sup> See <https://www2.illinois.gov/cms/About/Pages/default.aspx> (last visited Dec. 12, 2017).

<sup>16</sup> See <https://www2.illinois.gov/cms/About/Pages/MissionStatement.aspx> (last visited Dec. 12, 2017).

<sup>17</sup> See <https://www2.illinois.gov/cms/agency/property/Pages/default.aspx> (last visited Dec. 12, 2017).

<sup>18</sup> See <https://www2.illinois.gov/cms/personnel/Pages/default.aspx> (last visited Dec. 12, 2017).

<sup>19</sup> 20 ILCS 415/2.

<sup>20</sup> 20 ILCS 415/3.

<sup>21</sup> OEIG Final Report, Case No. 11-01567, pp. 11-12.

that State hiring and personnel decisions are generally made on the basis of an individual's merit and fitness for the position, as set forth in Jurisdiction B of the Personnel Code.<sup>22</sup>

Separate from the *Rutan* principles and Administrative Orders described above, a minority of State positions are exempt from Jurisdiction B under section 4d(3) of the Personnel Code. These positions, referred to as 4d(3) exempt positions, involve either principal administrative responsibility for the determination of policy or principal administrative responsibility for the way in which policies are carried out, and are therefore exempted by the Civil Service Commission (CSC) from Jurisdiction B on the request of CMS.<sup>23</sup> As a result, 4d(3) exempt positions can be filled on the basis of political or other non-merit considerations.

To create a new position that will be designated exempt from Jurisdiction B under section 4d(3), an agency must first draft and submit a position description to CMS for review.<sup>24</sup> The position description, also known as a CMS-104 Position Description Form, contains essential information about a position, such as its title, job duties, reporting structure and any specialized skills or knowledge required. If CMS concludes that a position is appropriate for exemption from Jurisdiction B, it will forward the position to the CSC for its review.<sup>25</sup> The CSC makes the final determination regarding whether a position should be 4d(3) exempt.<sup>26</sup>

In making this determination, the CSC reviews the CMS-104 and CMS's recommendation in relation to a number of factors relevant to the exemption request. These include:

- the amount and scope of the position's principal authorities to make and administer policy;
- its independent authority to represent the agency to those outside of the agency;
- its capability to bind the agency to a course of action;
- the nature of the program for which the position has principal policy responsibility;
- the placement of the position within the agency's organization; and,
- the mission, size and geographical scope of the agency program in which the position is located.<sup>27</sup>

Based on these assessments, the CSC then approves or denies the exemption request.

Finally, the Director of CMS must inform the CSC in writing of any changes in the essential functions, reporting structure, working title, work location, position title, position number or specialized knowledge, skills, abilities, licensure or certification of any existing 4d(3) exempt position.<sup>28</sup> The CSC may rescind the 4d(3) exempt classification of any previously deemed 4d(3) exempt position that it determines no longer meets the requirements for exemption.<sup>29</sup>

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<sup>22</sup> 20 ILCS 415/4a(2).

<sup>23</sup> 20 ILCS 415/4d(3).

<sup>24</sup> OEIG Interview of Denise Connelly, CMS Bureau of Personnel *Rutan* Compliance and Administration Supervisor, conducted on Nov. 30, 2017.

<sup>25</sup> OEIG Interview of Deborah Hensey, CMS Bureau of Personnel Deputy Director, conducted on Sept. 26, 2017.

<sup>26</sup> 20 ILCS 415/4d(3).

<sup>27</sup> 80 Ill. Admin. Code § 1.142(a).

<sup>28</sup> 80 Ill. Admin. Code § 1.142(c).

<sup>29</sup> 80 Ill. Admin. Code § 1.142(b).

## **II. OEIG'S SELF-INITIATION**

During a separate OEIG investigation, the OEIG became aware of a CMS employee, Ross Breckenridge, who had been hired into a 4d(3) exempt Senior Public Service Administrator (SPSA) position in the BOPM. The OEIG learned that Mr. Breckenridge's personnel history and position description showed his position headquartered in St. Clair County. The OEIG learned that the CSC, however, had the same position listed as headquartered in Sangamon County. The OEIG initiated this case in November 2015, to determine whether CMS informed the CSC, pursuant to 80 Ill. Admin. Code § 1.142(c), of the updated position description and whether it impacted the position's 4d(3) exemption status.

The OEIG was initially focused on what CMS had reported to the CSC regarding Mr. Breckenridge's position. During the investigation, however, the OEIG discovered that Mr. Breckenridge, and six other individuals, who had been hired since the start of Governor Rauner's administration into 4d(3) exempt Regional Client Manager positions, were not performing exempt duties necessary to justify the 4d(3) exemption status.

## **III. INVESTIGATION**

### **A. The Origination of the Regional Client Manager Position**

In March 2004, CMS created the position of Regional Client Manager within the BOPM and submitted the position descriptions of nine Regional Client Managers<sup>30</sup> to the CSC for approval of exempt status pursuant to 4d(3) of the Personnel Code. As part of the request, CMS submitted a position description, a letter from then-Director Michael Rumman providing rationale for the exemption, and an organizational chart identifying the Regional Client Managers' reporting structure.

#### **1. Regional Client Manager Position Description**

When the nine Regional Client Manager positions were created in 2004, the position descriptions listed the position titles as SPSA and the working titles as "Client Manager # 1" through "Client Manager # 9." In updates to the position description on September 1, 2007, two of the positions were abolished, and the remaining seven were clarified. The position titles remained SPSA, but the working titles were changed to "Regional Client Manager 1" through "Regional Client Manager 7," and each position was reassigned from having responsibility over specific State agencies to covering specific regions of the State.

When created, the duties listed in the Regional Client Manager position descriptions were identical, except for which agencies each position covered, and included the following duties:

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;

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<sup>30</sup> Two Regional Client Manager positions have since been abolished, in September 2007, when the Regional Client Manager positions were changed from covering specific agencies to geographical regions.

- develops and revises Statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager;
- provides agency-specific parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS Bureau of Strategic Sourcing and Procurement (BOSSAP) Facilities Services Manager;
- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- supports annual BOPM budget preparation and appropriation requests;
- monitors agency property management budget performance;
- reports regularly on projected versus actual cost savings;
- serves as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues;
- assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts;
- possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors;
- works with agency Directors by surveying agency facilities and inspecting sites to identify space needs and cost efficient ways to restructure the use of space in Statewide facilities, under the direction of the BOPM Deputy Director;
- prepares reports showing initial and long-term plans for reorganizing facility staff for review by the BOPM Deputy Director and agency Directors;
- works with human resources and labor relations staff to reorganize facilities management staff;
- works with State leasing personnel and transaction brokerage teams to evaluate lease portfolios and restructure existing leases or find new leases if appropriate;
- implements the process of soliciting space and operational needs requests from facilities;
- develops methods of reconfiguring and redistributing facility space resources;
- oversees capital improvements for agency facilities under the guidance of the BOPM Deputy Director and the BOPM Planning Department;
- assists with preparing information for requests for Capital Development Board (CDB) projects for agency facilities;
- assists in the final inspections of CDB projects prior to final payment;
- monitors and reports on progress of property management initiatives to the BOPM Deputy Director and agency Directors;
- establishes key performance measures for property management initiatives and tracks projections against results;
- oversees operational analyses for all property management projects;

- plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met;
- works with the Illinois Emergency Management Agency (IEMA) and the US Department of Homeland Security to develop emergency plans for facilities;
- provides agency input on the development of new policies and initiatives to enhance the procurement of facilities trade and building services contracts and facilities utilities and professional services contracts to the BOSSAP Facilities Portfolio Services Manager;
- assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection;
- supports the development of cost-reduction strategies for the portfolios of facilities goods and services;
- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules;
- clarifies the logistics of employee benefits with vendors to meet user agency requirements;
- supports vendor negotiations;
- independently manages contract administration on an ongoing basis;
- oversees periodic supplier reviews and monitors the progress and quality of goods and services provided by suppliers;
- submits routine reports on the quality and timeliness of contract procurements to the BOPM Deputy Director;
- directs and administers the activities of CMS, user agency, and contractual staff, directly and through subordinate managers;
- establishes individual staff and program objectives;
- provides feedback on staff performance, and establishes and implements corrective action plans;
- independently reallocates resources to maintain optimal operational efficiency;
- coordinates activities of intra/inter-divisional and departmental staff to ensure a consistent mission to accomplish property management goals;
- evaluates the progress of professional staff development as needed; and
- performs other duties as assigned which are reasonably within the scope of the duties listed in each Position Description.

Per the position descriptions, each of the Regional Client Manager positions is classified in the SPSA title. The CMS Class Specification for SPSA positions outlines the general level of responsibility and types of duties that positions classified as SPSA generally perform, providing context for what the duties listed in a position description entail. The Class Specification states, in relevant part:

The Senior Public Service Administrator encompasses a broad band of senior state management positions in agencies . . . with a level of responsibility at least equivalent to a major program manager's . . . . Incumbents of this class either serve as policy-making officials or have major administrative responsibilities. As a policy-making official, an incumbent reports directly to the director or assistant director of the agency and participates in determining policy which fixes objectives or states the principles to control action toward operating objectives or toward the

conduct of one or more administrative units immediately subordinate to the director or assistant director, or participates in planning and programming agency activities mandated by legislation or the agency's director or assistant director. Positions serving as deputy directors or staff assistants to directors or assistant directors are also included in this class.

## **2. CMS's Rationale for Exempt Position**

The rationale that CMS listed in its 4d(3) exemption requests to the CSC for the Regional Client Manager position, dated March 29, 2004, included:

- This position will report to the Deputy Director of the Bureau of Property Management. This Client Manager also has substantial reporting responsibilities to the agency heads of the client agencies particularly on issues regarding restructuring of facility utilization, relocation of facilities, and reorganization of facilities management staff within the agencies.
- This Client Manager works in concert with the Deputy Director on policy formulating, planning, directing, implementing and administering all property management operations for the client agencies in partnership with the agencies' Directors; develops/revises statewide client agencies' facilities management policies which fix objectives and state principles to control operating objectives in the agencies impacting all agencies' facilities both owned and leased statewide consisting of approximately [varying] square feet of facility space with authority over an annual operating budget of approximately [varying millions of dollars]; directs the planning and programming agency-wide activities mandated by Executive Order 10 (Executive Order to Consolidate Facilities Management, Internal Auditing and Staff Legal Functions).
- Client Manager #[] administers all property management functions for the Departments involving directing the planning and programming of departmental activities, integrating the plans and projections of all intra- and interdivisional and departmental organizational groups involved in the property management functions for the client agencies including, but not limited to, organizational entities in CMS and client agencies involved in asset management, planning, transactions, property administration, contract services administration, facility management, CDB staff and all entities involved in the provision of facility and asset management.
- This position serves as official agency spokesperson on behalf of the Deputy Director to all internal and external entities such as vendors, contractors, the public, and private and federal officials in the development of initiatives and the resolution of issues associated with client agencies' property management.

CMS attached position descriptions listing out the duties in detail, as laid out above, to the exemption request letter, as well as an organizational chart showing that the Client Managers<sup>31</sup> would serve as direct reports to the Deputy Director of the Bureau of Property Management. The CSC's files reflect that it granted 4d(3) exempt status to each of the Client Manager positions on April 15, 2004.

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<sup>31</sup> In 2004, the position was titled "Client Manager" and was changed to "Regional Client Manager" in 2007.

### **3. The BOPM Organizational Chart**

Since the Regional Client Manager positions were created, the BOPM organizational chart has listed them as part of the Office of the BOPM Deputy Director. All the Regional Client Managers are shown as directly reporting to the Deputy Director of the BOPM, and no other positions report to the Regional Client Managers. The organizational chart submitted to the CSC in 2004 for the initial review of the position as a 4d(3) exempt position, showed the Regional Client Manager positions directly reporting to the Deputy Director of the BOPM. Two additional organizational charts received by the OEIG during this investigation, dated, January 6, 2016, and November 1, 2017, continued to show the seven Regional Client Manager positions having no subordinates and reporting directly to the Deputy Director of the BOPM.

#### **B. CMS's Changes to Position Descriptions Submitted to the CSC**

On September 1, 2007, the Regional Client Manager position descriptions were changed for the first time. At that time of this adjustment, two of the nine positions were abolished, and the remaining seven were changed from covering specific agencies to covering regions of the State. The position duties did not change from those listed in the description of the 2004 version above, aside from adjustments to reflect that each Regional Client Manager was responsible for specific regions rather than specific agencies. The CSC's files reflect that it received these updated position descriptions on October 2, 2007.

The first duty changes to a Regional Client Manager position description took place on January 1, 2008, when the following duties were added to the Regional Client Manager 6 position:

- develops and administers space utilization agreements for all CMS leased State property;
- participates in developing and implementing policies and procedures to utilize excess State leased and operated space throughout the State;
- processes space requests from all State entities by performing an initial review of agency requests, evaluation of available space, and research of other options open to agencies requesting space;
- submits options and recommendations regarding submitted space requests from agencies for approval;
- coordinates space request needs with other BOPM staff;
- negotiates terms, conditions, and costs, and prepares interagency agreements with agencies for the use of excess office space throughout the State in CMS leased facilities;
- coordinates requests from private parties requesting to use excess space in State leased facilities;
- works closely with agencies to negotiate terms, conditions, and costs, and prepares lease agreements complying with Administrative Code rules on fair market rent and terms; and
- maintains records of all transactions including databases listing tenants, rent, terms, square footage, and vacancies.

The following duties were removed from the Regional Client Manager 6 position description in that same clarification:

- directs and administers the activities of CMS, user agency, and contractual staff, directly and through subordinate managers;
- establishes individual staff and program objectives;
- provides feedback on staff performance, and establishes and implements corrective action plans;
- independently reallocates resources to maintain optimal operational efficiency;
- coordinates activities of intra/inter-divisional and departmental staff to ensure a consistent mission to accomplish property management goals; and
- evaluates the progress of professional staff development as needed.

The CSC received the clarified position description including these new duties and the removal of duties on April 25, 2008.

The duties of the Regional Client Manager 2 and Regional Client Manager 3 positions were changed on November 1, 2012. The Regional Client Manager 2 position gained the following duties:

- plans and directs all State agency moves as a result of CMS reorganizing, remodeling, and restacking agency offices within the Chicago/Northern region;
- plans and integrates the plans and projects for relocating staff due to CMS reducing leased office space and using State-owned space more efficiently in the Chicago/Northern region;
- ensures that required health, life, and safety inspections occur in remodeled or reorganized facilities in the Chicago/Northern region, by working with Deputy Directors and Regional Facilities Managers; and
- ensures that all telecom, data processing, building mechanicals, and elevator/ADA issues and needs are coordinated for the move of State agencies into new space to ensure that all agency program needs are met, in cooperation with agency Directors.

The Regional Client Manager 3 position gained the following duties:

- conducts market and demographic research on lease property markets in the Chicago/Northern region to identify opportunities for redevelopment of currently leased property, consolidations of leased property, renegotiation of existing leases, and leasing of new property, in concert with the Bureau Division Managers of Transactions;
- develops local and regional policies and strategies for leased property administration to develop baselines for new leases and for restructuring existing leases;
- develops financial models to analyze leased property transactions;
- researches and analyzes leased property trends and adjusts leasing strategies accordingly; and
- trains all transactions staff on policies developed and updated for the BOPM leasing portfolio.

The CSC's files indicate that it received the clarified position descriptions with these new duties on January 25, 2013. Several of the Regional Client Manager positions have had work location changes over the life of the positions.

**C. CMS's First Instance of Providing a Limited Response to an OEIG Request for Documents**

On November 12, 2015, the OEIG requested the complete hiring file (including a position description) for Regional Client Manager 5 Ross Breckenridge. In March 2016, the OEIG requested position descriptions for the remaining six Regional Client Manager positions.

On December 16, 2016, the OEIG expanded its review of the remaining six Regional Client Managers and requested the respective hiring and personnel files, which specifically included requests for position descriptions, for each of the remaining six Regional Client Managers. Mr. Breckenridge's files were not included in this request because they had previously been provided by CMS. In response, in January 2017, CMS provided the OEIG with the following position descriptions for the six Regional Client Managers:

- Regional Client 1 Position Description: dated September 1, 2007
- Regional Client 2 Position Description: dated November 1, 2012
- Regional Client 3 Position Description: dated November 1, 2012
- Regional Client 4 Position Description: dated September 1, 2007
- Regional Client 6 Position Description: dated February 19, 2015
- Regional Client 7 Position Description: dated September 1, 2007.<sup>32</sup>

CMS did not include in its January 2017 response, any position descriptions dated in 2016, even though the OEIG later learned that these position descriptions had been updated in October 2016. The OEIG only learned of these October 2016 position descriptions because OEIG investigators sent another request for documents (RFD) on September 27, 2017, requesting that CMS provide the complete position histories, including all historical and current position descriptions for the Regional Client Manager Positions to determine what updates had been sent to the CSC. In response, on October 17, 2017, CMS sent the OEIG all seven Regional Client Manager position descriptions that had been updated on October 16, 2016.

The OEIG relied on the outdated position descriptions provided by CMS in January 2017, when investigators interviewed the Regional Client Managers.<sup>33</sup> However, the duties in the October 2016 position descriptions included many of the same duties that were in the prior position descriptions, including working with the Deputy Director, policymaking duties, and acting as an official spokesperson for the Deputy Director. The specific duties that remained the same are as follows:

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<sup>32</sup> In response to an earlier OEIG request for the position descriptions for these six Regional Client Managers, sent to CMS on March 28, 2016, CMS responded on April 14, 2016, with a more current version of the Regional Client Manager 7 position description, showing a work county change from Sangamon to Champaign, effective March 1, 2016.

<sup>33</sup> Only Regional Client Manager Hermes was interviewed prior to the December 16, 2016 request, and thus the OEIG relied on his position description dated February 19, 2015, which was provided by CMS on April 14, 2016, during the interview of Mr. Hermes.

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;
- develops and revises statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager;
- provides agency-specific parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS BOSSAP Facilities Services Manager;
- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- supports annual BOPM budget preparation and appropriation requests;
- serves as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues;
- assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts;
- possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors;
- works with agency Directors by surveying agency facilities and inspecting sites to identify space needs and cost efficient ways to restructure the use of space in Statewide facilities, under the direction of the BOPM Deputy Director;
- assists with preparing information for requests for CDB projects for agency facilities;
- assists in the final inspections of CDB projects prior to final payment;
- plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met;
- provides agency input on the development of new policies and initiatives to enhance the procurement of facilities trade and building services contracts and facilities utilities and professional services contracts to the BOSSAP Facilities Portfolio Services Manager;
- assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection;
- supports the development of cost-reduction strategies for the portfolios of facilities goods and services;
- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules;
- independently manages contract administration on an ongoing basis;
- oversees periodic supplier reviews and monitors the progress and quality of goods and services provided by suppliers; and
- performs other duties as assigned which are reasonably within the scope of the duties listed in each Position Description.

In the October 2016 updates, CMS changed each of the Regional Client Manager position descriptions to be identical in duties to each other. Some duties were removed from all of them, including:

- monitors agency property management budget performance;
- reports regularly on projected versus actual cost savings;
- prepares reports showing initial and long-term plans for reorganizing facility staff for review by the BOPM Deputy Director and agency Directors;
- works with human resources and labor relations staff to reorganize facilities management staff;
- works with State leasing personnel and transaction brokerage teams to evaluate lease portfolios and restructure existing leases or find new leases if appropriate;
- implements the process of soliciting space and operational needs requests from facilities;
- develops methods of reconfiguring and redistributing facility space resources;
- oversees capital improvements for agency facilities under the guidance of the BOPM Deputy Director and the BOPM Planning Department;
- monitors and reports on progress of property management initiatives to the BOPM Deputy Director and agency Directors;
- establishes key performance measures for property management initiatives and tracks projections against results;
- oversees operational analyses for all property management projects;
- works with the Illinois Emergency Management Agency (IEMA) and the US Department of Homeland Security to develop emergency plans for facilities;
- clarifies the logistics of employee benefits with vendors to meet user agency requirements;
- supports vendor negotiations; and
- submits routine reports on the quality and timeliness of contract procurements to the BOPM Deputy Director.

For the Regional Client Manager 1 through 5, and 7 positions, that meant removing the following duties related to supervision and oversight of CMS, other agency, and contractual employees:

- establishes individual staff and program objectives;
- provides feedback on staff performance, and establishes and implements corrective action plans; and
- evaluates the progress of professional staff development as needed.

For the Regional Client Manager 6 position, the following duties, which had been removed from only that position description on January 1, 2008, were added back to the position description:

- directs and administers the activities of CMS, user agency, and contractual staff, directly and through subordinate managers;
- independently reallocates resources to maintain optimal operational efficiency; and
- coordinates activities of intra/inter-divisional and departmental staff to ensure a consistent mission to accomplish property management goals.

The following duties were added to all seven of the Regional Client Manager position descriptions in the October 2016 clarification:

- oversees security and life safety functions Statewide;
- develops and implements programs designed to protect employees, clients, visitors, physical property and proprietary information while ensuring the continuity of operations;
- confers with agency Directors in establishing policies and procedures;
- ensures agency Directors have accurate and current information to identify and request building closures in the event of an emergency or disaster;
- routinely inspects CMS facilities for safety concerns including appropriate lighting on grounds and maintenance of outside areas;
- inspects electronic security systems;
- works with local contractual security guards to ensure continuity of services;
- addresses agencies' concerns regarding security, emergency, or disaster planning;
- requests upgrades of outdated security systems;
- travels throughout the State as needed to assist with CMS responsibilities for housing State agencies;
- provides expertise to conduct vendor meetings for site review prior to receiving prospective bids;
- independently addresses vendor complaints and protests;
- assists Facilities Portfolio staff in working with agency issues and concerns that arise with vendor services;
- participates in training and seminars to ensure facilities have information to address security issues regarding emergency and disaster situations;
- conducts training sessions on appropriate protocol for contacting emergency services for various types of incidents;
- communicates security concerns through chain of command to the BOPM Deputy Director and/or agency Director ensuring information is accurate and disseminated from a single source;
- ensures prompt notification of agency directors of any regional security concerns;
- establishes communications with local authorities in emergency situations;
- monitors provisions of contractual agreements to ensure all are adhered to;
- issues complaints, recommends termination or renewal of contracts to managers at CMS sites; and
- works with agency directors to complete space request documents for submission to CMS transactions staff.

Finally, the Regional Client Manager 2 and 3 position descriptions had all the duties, added in the November 1, 2012 clarifications, removed; and the Regional Client Manager 6 position description had all duties added in the January 1, 2008 clarification removed.

#### **D. Current Regional Client Managers**

The following table is a list of current Regional Client Managers.<sup>34</sup>

<b>Position Title</b>	<b>Incumbent</b>	<b>Date Started</b>	<b>Location (County)</b>	<b>Salary (annual)</b>
Regional Client Manager 1	Brian Walsh	October 5, 2015	Cook	\$51,540
Regional Client Manager 2	Elzbieta Zaworski	January 19, 2016	Cook	\$51,540
Regional Client Manager 3	Emil “Alvarez” Jones	September 8, 2015	Cook	\$60,000
Regional Client Manager 4	John Danna II	June 15, 2015	Sangamon	\$51,540
Regional Client Manager 5	Ross Breckenridge	August 19, 2015	St. Clair	\$75,000
Regional Client Manager 6	Bradley Hermes	July 6, 2015	Sangamon	\$60,000
Regional Client Manager 7	Jeffrey Stevenson	March 1, 2016	Champaign	\$65,004

**E. Duties Being Performed by Regional Client Managers**

The OEIG interviewed each incumbent Regional Client Manager listed in the table above, as well as former BOPM Deputy Director Terry Schierholz and current BOPM Deputy Director Josh Potts. The Deputy Director of the BOPM is listed as the direct supervisor for the Regional Client Managers in the Regional Client Manager position descriptions and the BOPM organizational charts.

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<sup>34</sup> During an interview with CMS *Rutan* Compliance and Administration Supervisor Denise Connelly, on November 30, 2017, the OEIG learned that Mr. Hermes had been moved into a different 4d(3) exempt position. A Verification Checklist for Exempt Positions Form that the OEIG received on December 12, 2017, described Mr. Hermes’ position as “Strategic Planning and Space Planning Manager.”

## 1. Interview of Former CMS Bureau of Property Management Deputy Director Terry Schierholz

The OEIG interviewed former Deputy Director Terry Schierholz on March 9, 2016 and again on November 13, 2017. Mr. Schierholz stated that he was familiar with the Regional Client Manager positions in the BOPM. According to Mr. Schierholz, Regional Client Managers had similar duties to Facilities Managers including oversight of facility issues, the health and safety of the facilities, Americans with Disabilities Act (ADA) issues, landlord issues, or complaints received. Mr. Schierholz stated that both positions also addressed building issues related to heating, cooling, windows, and doors. Mr. Schierholz said that Regional Client Managers provide reports regarding facility issues to [Employee 1],<sup>35</sup> [Employee 2], and [Employee 3].

Mr. Schierholz stated that he did not have direct knowledge of any of the Regional Client Managers activities or duties, and that any knowledge he had of their duties came from their supervisors [Employee 1], [Employee 2], and [Employee 3]. According to Mr. Schierholz, none of the Regional Client Managers did the following duties, as delineated in their position descriptions:

- worked in concert with the Deputy Director on policy formulating;
- worked under the guidance of the Chief Financial Officer and Deputy Director overseeing the BOPM budget;
- worked under the guidance of the Chief Financial Officer and Deputy Director to identify and prioritize budgetary requirements;
- served as spokesperson for the BOPM Deputy Director;
- provided respective agency input to Portfolio Manager regarding developing new policies to enhance the procurement of facility trade and building services contracts;
- directed or administered activities of CMS and user agency staff;
- established individual and program objectives for CMS and user agency staff; or
- coordinated intradivisional and departmental activities of staff to ensure consistent mission to accomplish BOPM goals.

With regard to developing/revising Statewide agency facility management policies, Mr. Schierholz said that the seven Regional Client Managers had an opportunity to provide input regarding facility management policies at regional meetings, but said that it would be done in conjunction with their supervisors. Mr. Schierholz said that none of the Regional Client Managers would have a role in developing the contracts, or redefining or interpreting the scope of work on projects or contracts, but said that they would have a role in enforcing the scope of work on projects and contracts. According to Mr. Schierholz, the Regional Client Managers provide input and recommendations to their supervisors with regard to issues of resource commitment and allocation, assessment of space, and health and safety issues.

Mr. Schierholz also said that none of the seven Regional Client Managers did any duties directly assigned by him during his tenure as Deputy Director. According to Mr. Schierholz, “they

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<sup>35</sup> [Redacted]

never reported to me.” Mr. Schierholz also said that he did not believe the Regional Client Managers supervise any staff.

## **2. Interview of CMS Bureau of Property Management Deputy Director Josh Potts**

The OEIG interviewed Josh Potts, the current Deputy Director of the BOPM, on October 4, 2017. Mr. Potts started in this position in April 2017. According to Mr. Potts, his direct reports did not include the Regional Client Manager position. Mr. Potts said that he was familiar with the title, but does not know “a ton about all of them.” Mr. Potts said that generally, the Regional Client Managers visit facilities to “check up on things” and make sure that “everything is ok.”

When asked specifically if the Regional Client Managers were conducting the duties listed in their position descriptions, Mr. Potts said that he was not aware of any of them doing the following work:

- working in concert with the Deputy Director on policy formulating;
- developing/revising Statewide agency facility management policies;
- providing agency-specific components of a Statewide Energy Consumption Plan;
- working under the guidance of the Chief Financial Officer and Deputy Director overseeing the BOPM budget;
- serving as spokesperson for the BOPM Deputy Director;
- developing methodologies based on best practices to reconfigure and distribute facility space resources;
- providing respective agency input to Portfolio Manager regarding developing new policies to enhance the procurement of facility trade and building services contracts;
- directing and administering activities of CMS and user agency staff;
- establishing individual and program objectives for CMS and user agency staff;
- independently reallocating resources to maintain optimal operational efficiency;
- coordinating intradivisional and departmental activities of staff to ensure consistent mission to accomplish BOPM goals; and
- working with Illinois Emergency Management Agency and Federal Homeland Security to develop emergency policies.

Mr. Potts said that five Regional Client Managers (Mr. Walsh, Ms. Zaworski, Mr. Jones, Mr. Breckenridge, and Mr. Stevenson) “never” do duties directly assigned by him. Mr. Potts said that Mr. Danna’s work with Allied Universal Security (AUS) was assigned by him. According to Mr. Potts, Mr. Danna notifies Mr. Potts if there are issues with AUS, and Mr. Potts has provided Mr. Danna with guidance regarding what to communicate back to the firm but that the guidance has a “narrow scope,” and Mr. Potts does not consider Mr. Danna to be his spokesperson. With regard to Mr. Hermes, Mr. Potts said that he did not think that Mr. Hermes was assigned any duties directly by him, and if he needed Mr. Hermes to work on a project, he would direct [Employee 3] to ask Mr. Hermes to do it.

### 3. Regional Client Manager Brian Walsh

The OEIG interviewed Regional Client Manager 1 Brian Walsh on May 31, 2017. Mr. Walsh works in the James R. Thompson Center (Thompson Center) in Chicago, and has held this position since October 5, 2015. Mr. Walsh was aware that he was an SPSA, but was not aware of any other title associated with his position. Mr. Walsh said that his current duties consist of:

- setting up tables and chairs for special events;
- reporting the condition of conference rooms to his supervisor; and
- monitoring inventory inside shared spaces in the Thompson Center.

For example, Mr. Walsh said that he reports any non-working lights or stains on the floor from prior use of conference rooms. Mr. Walsh also stated that prior to his current duties, he received assignments to travel to State offices for work “in terms of the ADA buildout.” Those duties included things like, measuring handrails in restrooms and parking spaces in parking lots to check for compliance with ADA standards. Mr. Walsh stated that he performed those ADA-related duties for the first three to four months in his position, but rarely does them since beginning the set-up related duties.

Mr. Walsh admitted that he does not perform any of the following duties:<sup>36</sup>

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;
- develops and revises Statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager;
- provides agency-specific parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS BOSSAP Facilities Services Manager;
- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- supports annual BOPM budget preparation and appropriation requests;
- serves as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues;

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<sup>36</sup> The duties listed that Mr. Walsh denied performing only include duties that remained in his position description after the 2016 update. Mr. Walsh also denied performing numerous other duties from his position description dated September 1, 2007, which were removed from his 2016 position description. During his interview, however, Mr. Walsh did not inform the OEIG that the position description shown to him was out of date. Mr. Walsh said that the position description was “a little familiar,” and that he may have received it when he was hired.

- assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts;
- works with agency Directors by surveying agency facilities and inspecting sites to identify space needs and cost efficient ways to restructure the use of space in Statewide facilities, under the direction of the BOPM Deputy Director;
- assists with preparing information for requests for CDB projects for agency facilities;
- assists in the final inspections of CDB projects prior to final payment;
- plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met;
- provides agency input on the development of new policies and initiatives to enhance the procurement of facilities trade and building services contracts and facilities utilities and professional services contracts to the BOSSAP Facilities Portfolio Services Manager;
- assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection;
- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules;
- independently manages contract administration on an ongoing basis; and
- oversees periodic supplier reviews and monitors the progress and quality of goods and services provided by suppliers.

Mr. Walsh claimed that he actually “possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of BOPM, with deference to the BOPM Deputy Director and agency Directors.” When asked to explain how he performs that duty, Mr. Walsh said that he does so by emailing his supervisor about issues that he finds, e.g., broken lights, when he is setting up tables and chairs in conference rooms, so that a work order can be put in to fix the issue.

Mr. Walsh also claimed to have done two duties even though these duties were removed in the 2016 Position Description update. First, he said that he “independently reallocates resources to maintain optimal operational efficiency.” He explained that he believes he performs that duty by setting up tables and chairs for special events. Second, Mr. Walsh claimed that he “develops methods of reconfiguring and redistributing facility space resources,” by modifying the layout of tables and chairs at events he is told to set up in a way that he believes will be more comfortable.

Mr. Schierholz, in his OEIG interview, stated that he was aware of Mr. Walsh, and may have interviewed him for the position, but he never interacted with Mr. Walsh after Mr. Walsh was hired. Mr. Schierholz said that he knew that Mr. Walsh would have oversight of facility issues at some sites, but did not know what those were. Mr. Schierholz said that he never assigned duties to Mr. Walsh. The current BOPM Deputy Director, Mr. Potts, said that he has not met Mr. Walsh, does not know what duties Mr. Walsh performs, and has never assigned any duties to Mr. Walsh.

#### **4. Regional Client Manager Emil “Alvarez” Jones**

The OEIG interviewed Regional Client Manager 3 Emil “Alvarez” Jones on June 21, 2017. Mr. Jones works at the Michael A. Bilandic Building (Bilandic Building) in Chicago and has held

his Regional Client Manager position since September 8, 2015. Mr. Jones said that his current title is Assistant Facilities Manager,<sup>37</sup> and he works for Bilandic Building Facilities Manager [Employee 4],<sup>38</sup> performing these duties:

- working with the maintenance work order system for the building;
- ordering supplies for the building;
- monitoring the switch from day shift to night shift of the janitorial staff;
- working with staff in the Bilandic Building during fire drills, remodels, and agency movements; and
- doing inventory of property in the building.

Mr. Jones gave a few examples of his work, including: passing work orders on to building engineers to be completed, making sure the night shift janitorial staff complete their duties, and finding out what needs to be ordered in [Employee 4's] absence. Mr. Jones described his duties as "basically Facilit[ies] Manager stuff," and said that he does almost all the same duties as [Employee 4], except that [Employee 4] submits reports regarding the Bilandic Building's facility issues and oversees several other buildings in the area. Finally, Mr. Jones said that he did not remember ever being told he would be performing other duties in the future.

Mr. Jones admitted that he does not perform any of the following duties:<sup>39</sup>

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;
- develops and revises Statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager;
- provides agency-specific parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS BOSSAP Facilities Services Manager;
- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- supports annual BOPM budget preparation and appropriation requests;

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<sup>37</sup> The Assistant Facilities Manager position is in fact a separate, *Rutan*-covered position within the BOPM. Based on CMS documents the OEIG has reviewed, CMS uses both "Facility" and "Facilities" Manager to describe this position. This position will be referred to as "Facilities Manager" for purposes of this report.

<sup>38</sup> According to CMS records, [Employee 4] actually holds a *Rutan*-covered Assistant Facilities Manager position.

<sup>39</sup> The duties listed that Mr. Jones denied performing only include duties that remained in his position description after the 2016 update. Mr. Jones also denied performing numerous other duties from his position description dated November 1, 2012, which were removed from his 2016 position description. During his interview, however, Mr. Jones did not indicate to the OEIG that the position description shown to him was out of date. In fact, Mr. Jones said he was not previously familiar with his position description.

- serves as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues;
- assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts;
- possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors;
- works with agency Directors by surveying agency facilities and inspecting sites to identify space needs and cost efficient ways to restructure the use of space in Statewide facilities, under the direction of the BOPM Deputy Director;
- assists with preparing information for requests for CDB projects for agency facilities;
- assists in the final inspections of CDB projects prior to final payment;
- plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met;
- provides agency input on the development of new policies and initiatives to enhance the procurement of facilities trade and building services contracts and facilities utilities and professional services contracts to the BOSSAP Facilities Portfolio Services Manager;
- assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection;
- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules;
- independently manages contract administration on an ongoing basis; and
- oversees periodic supplier reviews and monitors the progress and quality of goods and services provided by suppliers.

Mr. Jones asserted that he performed two duties even though those duties were removed in the 2016 position description update. First, Mr. Jones claimed that he “independently reallocates resources to maintain optimal operational efficiency” for the Bilandic Building, by assisting the maintenance staff with the annual inventory of office furniture. Mr. Jones also stated that he “directs and administers the activities of CMS, user agency, and contractual staff, directly and through subordinate managers,” by, for example, contacting vendors to deal with insect issues.

In his OEIG interview, Mr. Schierholz said that he did not recall ever meeting Mr. Jones, and never assigned duties to him. Mr. Schierholz also said that he thought Mr. Jones might have had duties at the Thompson Center, then the Bilandic Building, and then the Thompson Center again. Mr. Potts said that he is familiar with Mr. Jones, but does not recall ever talking with him.

## **5. Regional Client Manager Jeffrey Stevenson**

The OEIG interviewed Regional Client Manager 7 Jeffrey Stevenson on April 10, 2017. Mr. Stevenson works in the Champaign area and has held his position since March 1, 2016. He said that his title is CMS Inspector. Mr. Stevenson described his duties as follows:

- 75% of the time, he visits State leased facilities and conducts inspections to ensure that landlords are complying with terms of leases, checking for items like working fire extinguishers and alarms, building safety issues, and janitorial issues; and
- the other 25% of the time, he assists [Employee 5] with his facility management duties at the Champaign Regional Office Building, at 2125 S. 1<sup>st</sup> St., Champaign, IL. In that role, he delivers supplies to areas of the building as needed, including air filters, cleans the building loading docks, helps run the building recycling program, and monitors the parking lot for parking violations.

Mr. Stevenson admitted that he does not perform any of the following duties:<sup>40</sup>

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;
- develops and revises Statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager;
- provides agency-specific parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS BOSSAP Facilities Services Manager;
- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- supports annual BOPM budget preparation and appropriation requests;
- assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts;
- possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors;
- assists with preparing information for requests for CDB projects for agency facilities;
- assists in the final inspections of CDB projects prior to final payment;
- plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met;
- assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection;

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<sup>40</sup> The duties listed that Mr. Stevenson denied performing only include duties that remained in his position description after the 2016 update. Mr. Stevenson also denied performing numerous other duties from his position description dated September 1, 2007, which were removed from his 2016 position description. During his interview, however, Mr. Stevenson did not indicate that the position description shown to him was out of date. Mr. Stevenson said he recalled reading over the position description, but could not recall when.

- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules;
- independently manages contract administration on an ongoing basis; and
- oversees periodic supplier reviews and monitors the progress and quality of goods and services provided by suppliers.

Mr. Stevenson claimed that he actually “serves as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues.” When asked to explain how he performs that duty, Mr. Stevenson said that he does so by showing janitorial service companies what services would be expected if they won a contract to perform services while on walkthroughs of leased buildings. However, he said that he does not have any duties related to speaking with the public, or private, entities on behalf of the Deputy Director.

In his OEIG interview, Mr. Schierholz said that he met Mr. Stevenson one time, but never assigned duties to him. According to Mr. Schierholz, he thought that Mr. Stevenson had duties related to providing facility management continuity in East Central Illinois because of [Employee 5’s] impending retirement. Mr. Potts said that he has never met Mr. Stevenson, does not know what duties he performs, and has never assigned duties to Mr. Stevenson.

## 6. Regional Client Manager John Danna II

The OEIG interviewed Regional Client Manager 4 John Danna II on April 14, 2017. Mr. Danna is headquartered in Springfield, but works all over the State, except for the Chicago area. Mr. Danna has held his Regional Client Manager position since June 15, 2015. Mr. Danna said that his duties include:

- conducting facility inspections of State leased buildings across the State, excluding the Chicago area;
- serving as the BOPM point of contact with AUS (a contractor that provides security services for the State) by passing on issues with security guards to AUS when they arise;
- conducting *Rutan* interviews; and
- working on procurement Requests for Proposals (RFP) for things needed for the move from and sale of the Thompson Center.

Mr. Danna admitted that he does not perform any of the following duties:<sup>41</sup>

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<sup>41</sup> The duties listed that Mr. Danna denied performing only include duties that remained in his position description after the 2016 update. Mr. Danna also denied performing numerous other duties from his position description dated September 1, 2007, which were removed from his 2016 position description. During his interview, however, Mr. Danna did not inform the OEIG that his position description had been updated in 2016. Mr. Danna said that he recalled seeing the position description when he was hired and when he received an evaluation.

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;
- develops and revises Statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager;
- provides agency-specific parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS BOSSAP Facilities Services Manager;
- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- supports annual BOPM budget preparation and appropriation requests;
- assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts;
- possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors;
- assists with preparing information for requests for CDB projects for agency facilities;
- assists in the final inspections of CDB projects prior to final payment;
- plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met;
- provides agency input on the development of new policies and initiatives to enhance the procurement of facilities trade and building services contracts and facilities utilities and professional services contracts to the BOSSAP Facilities Portfolio Services Manager;
- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules;
- independently manages contract administration on an ongoing basis; and
- oversees periodic supplier reviews and monitors the progress and quality of goods and services provided by suppliers.

Mr. Danna asserted that he actually does “serve as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues.” When asked to explain how he performs that duty, Mr. Danna said that he talks to staff at the leased facilities he inspects.

Mr. Danna further stated that he “assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection,” by being part of a group tasked with reviewing nine RFPs related to one project.

Finally, Mr. Danna believed that he “works with agency Directors by surveying agency facilities and inspecting sites to identify space needs and cost efficient ways to restructure the use of space in Statewide facilities, under the direction of the BOPM Deputy Director,” because he was in the process of being trained on completing Procurement Management Business Cases (PMBC), which involves going to current agency spaces to determine how much space they will need when they make a new request for space based on how many offices will be needed, and other requirements.

Mr. Danna also claimed to have done one duty even though that duty was removed in the 2016 position description update. Mr. Danna stated that he “independently reallocates resources to maintain optimal operational efficiency,” by, for example, ensuring that fire extinguisher inspections are up to date.

In his OEIG interview, Mr. Schierholz said that he had very little interaction with Mr. Danna, and just saw him in passing at work sometimes. Mr. Schierholz said that he never assigned duties to Mr. Danna, but that he knew that Mr. Danna had duties related to working with security contractors, and performing ADA and health and safety inspections. Mr. Potts said that he has met Mr. Danna because he works in Springfield, and works with AUS. Mr. Potts said that he does not know who regularly assigns Mr. Danna’s duties, but Mr. Potts does occasionally tell Mr. Danna what to communicate to AUS, if the issue rises to Mr. Potts’ level.

## **7. Regional Client Manager Bradley Hermes**

The OEIG interviewed Regional Client Manager 6 Bradley Hermes on August 16, 2016. At the time of the interview, Mr. Hermes said that he works in Springfield and has held his Regional Client Manager position since July 6, 2015. He was aware that he is an SPSA, but said his working title is Leasing Transactions. Mr. Hermes said his duties include the following: 70% of his work is finding space for agencies and planning floor designs, by working with agency representatives to determine what their needs are, including how many offices, cubicles, and breakrooms they will need; his remaining duties include doing construction estimates for work needed to accommodate user agency needs in leased space, and performing field verifications of the amount and type of space needed for space procurements, by measuring rooms and cubicles, reviewing the number of employees currently at a facility, and creating a spreadsheet version of the current floor plan.

Mr. Hermes admitted that he does not perform any of the following duties:<sup>42</sup>

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;

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<sup>42</sup> The duties listed that Mr. Hermes denied performing only include duties that remained in his position description after the 2016 update. Mr. Hermes also denied performing numerous other duties from his position description dated February 19, 2015, which were removed from his 2016 position description. During his interview, however, Mr. Hermes did not inform the OEIG that the position description was updated in 2016. Mr. Hermes said that he believed he saw part of the position description when he was hired.

- develops and revises Statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager;
- provides agency-specific parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS BOSSAP Facilities Services Manager;
- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- supports annual BOPM budget preparation and appropriation requests;
- possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors;
- assists in the final inspections of CDB projects prior to final payment;
- plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met;
- provides agency input on the development of new policies and initiatives to enhance the procurement of facilities trade and building services contracts and facilities utilities and professional services contracts to the BOSSAP Facilities Portfolio Services Manager;
- assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection;
- supports the development of cost-reduction strategies for the portfolios of facilities goods and services;
- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules;
- independently manages contract administration on an ongoing basis; and
- oversees periodic supplier reviews and monitors the progress and quality of goods and services provided by suppliers.

Mr. Hermes asserted that he “works with agency Directors by surveying agency facilities and inspecting sites to identify space needs and cost efficient ways to restructure the use of space in Statewide facilities, under the direction of the BOPM Deputy Director,” by drawing floor designs, surveying agency spaces, and working with agency representatives to determine how much space they will need.

Mr. Hermes also stated that he “serves as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues,” and “assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts.”

In his interview, Mr. Schierholz said that he had very little interaction with Mr. Hermes; only in passing at work. He said that he did not assign duties to Mr. Hermes, but that he knew that Mr. Hermes had duties related to doing architectural drawings for leased spaces. Mr. Potts said that he knows Mr. Hermes because Mr. Hermes works in Springfield. Mr. Potts said that he knows that Mr. Hermes mainly deals with making sure that potential spaces meet the needs of agencies requesting space, through physical measurement as well as AutoCAD drawings. However, Mr. Potts does not know who assigns Mr. Hermes' duties, and Mr. Potts acknowledged that he has not assigned duties to Mr. Hermes.

## **8. Regional Client Manager Ross Breckenridge**

The OEIG interviewed Regional Client Manager 5 Ross Breckenridge on July 20, 2017. Mr. Breckenridge works out of a CMS office in Glen Carbon, Illinois. Mr. Breckenridge has held his Regional Client Manager position since August 19, 2015. His territory covers the Metro East area and extends as far south as Chester, IL. He is aware that he is an SPSA, and believed that his working title is "Client Relations." Mr. Breckenridge said that his duties include:

- completing ADA inspections of State-leased buildings (similar to the type of inspections that Mr. Walsh discussed in his interview);
- completing building inspections to ensure that landlords are complying with the terms of leases and to identify any potential maintenance issues; and
- assisting with facility management duties by fixing building maintenance issues when the local Facilities Manager, [Employee 6], is out of the office, or when Mr. Breckenridge is closer to a facility with an issue than [Employee 6].

For example, he said that he might travel to a building with a malfunctioning light to repair it or determine what other action might be needed. Mr. Breckenridge said that he could not recall ever being told he would be assuming more duties in the future.

Mr. Breckenridge admitted that he does not perform any of the following duties:<sup>43</sup>

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;
- develops and revises Statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager;
- provides agency-specific parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS BOSSAP Facilities Services Manager;

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<sup>43</sup> The duties listed that Mr. Breckenridge denied performing only include duties that remained in his position description after the 2016 update. Mr. Breckenridge also denied performing numerous other duties from his position description dated February 19, 2015, which were removed from his 2016 position description. During his interview, however, Mr. Breckenridge did not indicate that the position description had been updated in 2016.

- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- assists in formulating and assembling information for requesting CDB projects;
- supports annual BOPM budget preparation and appropriation requests;
- assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts;
- provides agency input on the development of new policies and initiatives to enhance the procurement of facilities trade and building services contracts and facilities utilities and professional services contracts to the BOSSAP Facilities Portfolio Services Manager;
- assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection;
- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules; and
- independently manages contract administration on an ongoing basis.

Mr. Breckenridge believed that he “serves as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues,” by talking to staff and landlords at the leased buildings he inspects.

Mr. Breckenridge also claimed that he “possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of BOPM, with deference to the BOPM Deputy Director and agency Directors,” because he passes information about his building inspections on to his supervisor.

Mr. Breckenridge asserted that he “works with agency Directors by surveying agency facilities and inspecting sites to identify space needs and cost efficient ways to restructure the use of space in statewide facilities, under the direction of the BOPM Deputy Director,” by performing his assigned facility inspections, and “prepares reports showing initial and long-term plans for reorganizing facility staff for review by the BOPM Deputy Director and agency Directors,” by passing along his inspection reports to his supervisor. Mr. Breckenridge said that he “plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met,” by performing ADA inspections of buildings. And finally, Mr. Breckenridge claimed that he “oversees periodic supplier reviews and monitors the progress and quality of goods and services provided by suppliers” because he sees what goods are being delivered to buildings, and makes sure that “if we ask for lights, they’re not sending us pillows.”

Mr. Breckenridge also believed that he performed five duties even though those duties were removed in the 2016 position description update. First, Mr. Breckenridge claimed that he “independently reallocates resources to maintain optimal operational efficiency,” by, for example, moving a mobile air condition unit from one building to another during facility management projects. Second, Mr. Breckenridge said that he “works with State leasing personnel and transaction brokerage teams to evaluate lease portfolios and restructure existing leases or find new

leases if appropriate,” because he looks at leases for the buildings he is responsible for on the BOPM shared computer drive. He stated that reviewing leases and contracts are not “his official concern,” but that he would bring anything he saw up if he felt like there was the potential for restructuring a lease. He said he has never done so. Third, according to Mr. Breckenridge, he “implements the process of soliciting space and operational needs requests from facilities,” by assisting [Employee 6] with PMBCs. Finally, Mr. Breckenridge said that he “oversees capital improvements for agency facilities under the guidance of the BOPM Deputy Director and the BOPM Planning Department,” and “monitors and reports on progress of property management initiatives to the BOPM Deputy Director and agency Directors,” by visiting a building where a project was taking place to “go check on them to see how everything was going.” He said that he “assumes” that his reports make their way up to the Deputy Director, but does not know.

In his OEIG interview, Mr. Schierholz said that he had met Mr. Breckenridge once, right after Mr. Breckenridge started. He said that he did not assign duties to Mr. Breckenridge. Mr. Schierholz said that Mr. Breckenridge and [Employee 6] both performed facilities management duties in the Metro East area, including creating work orders and assigning work orders to maintenance staff, and that Mr. Breckenridge was responsible for facility inspections as well. Mr. Potts said that he has never met Mr. Breckenridge, does not know what duties he performs, and has never assigned Mr. Breckenridge’s duties.

## **9. Regional Client Manager Elzbieta Zaworski**

The OEIG interviewed Regional Client Manager 2 Elzbieta Zaworski on June 2, 2017. Ms. Zaworski works out of the Thompson Center and has held her Regional Client Manager position since January 19, 2016. She was aware that her title is SPSA, Regional Client Manager. Ms. Zaworski said that her duties include:

- assisting with facility management;
- facilitating procurements by revising Requests for Expenditure (RFE), evaluating requested commodities, services, and equipment; requesting and revising quotes for procurements;
- monitoring the order and execution of commodity calls, contracts, and procurement processes;
- confirming orders with Facilities Managers;
- forwarding RFEs to accounting for approval; and
- communicating with vendors about procurement orders and delivery timelines.

Ms. Zaworski stated that she also serves as an Information Technology (IT) Coordinator for Northern Chicago. She said that duty is relatively new for her, and she has been revising requests for IT service, evaluating requests for equipment and software, monitoring the use of agency equipment, and tracking user service requests in the role. Ms. Zaworski said that [Employee 2] once told her that her duties would expand as she gained experience, but did not give a timetable, or specify what that expansion would entail.<sup>44</sup>

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<sup>44</sup> [Employee 2] retired in February 2016, about a month after Ms. Zaworski started in her Regional Client Manager position. When Ms. Zaworski was interviewed almost a year and a half later, her duties had not expanded from the ones listed above.

Ms. Zaworski admitted that she does not perform any of the following duties:<sup>45</sup>

- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- identifies and prioritizes initial and ongoing budgetary requirements for the BOPM;
- possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors;
- works with agency Directors by surveying agency facilities and inspecting sites to identify space needs and cost efficient ways to restructure the use of space in Statewide facilities, under the direction of the BOPM Deputy Director;
- assists with preparing information for requests for CDB projects for agency facilities;
- assists in the final inspections of CDB projects prior to final payment;
- plans and integrates the plans and projects of all groups involved in property management for agencies, to ensure that all facilities standards set forth by regulating entities are met;
- assists with procurements by developing Requests for Proposals, evaluating proposals, assisting with negotiating with vendors, and working on vendor selection;
- assists in ensuring strict compliance with the Procurement Code and Standard Procurement Rules; and
- independently manages contract administration on an ongoing basis.

Ms. Zaworski stated that she does perform some of the duties from her position description. She claimed that she “works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions,” by using a new policy related to the Inter-governmental Purchasing System (IGPS) created and promulgated by [Employee 1] when she works on ordering things. She also believed that she “provides agency-specific parts of the Statewide Energy Consumption Plan to the BOPM Energy Manager,” and gave an example of once providing assistance to an IT Facilities Manager who was having trouble accessing reports and plans from a contractor. According to Ms. Zaworski, she “supports annual BOPM budget preparation and appropriation requests” because she once made an appropriation mistake when working on a procurement, and had to have fiscal staff assist her with correcting the mistake. Ms. Zaworski also claimed that she “assists the BOSSAP Facilities Services Portfolio Manager in negotiating and redefining the scope of work on projects and contracts,” by once talking to Facilities Managers about what they wanted for facility management software. Ms. Zaworski stated that she “provides agency input on the development of new policies and initiatives to enhance the procurement of facilities trade and building services contracts and facilities utilities and professional services contracts to the BOSSAP Facilities Portfolio Services Manager,” because she helped create a master list of leases and unoccupied State-owned buildings. Ms. Zaworski claimed that she “provides agency-specific

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<sup>45</sup> The duties listed that Ms. Zaworski denied performing only include duties that remained in her position description after the 2016 update. Ms. Zaworski also denied performing numerous other duties from her position description dated November 1, 2012, which were removed from her 2016 position description. During her interview, however, Ms. Zaworski did not indicate that the position description shown to her had been updated.

parts of a plan to completely restructure the sourcing of utilities and facilities trade services to the CMS Bureau of Strategic Sourcing and Procurement (BOSSAP) Facilities Services Manager.”

Ms. Zaworski asserted that she “develops and revised statewide facility management policies related to operating objectives for both leased and State-owned facilities” by working with contracts that are Statewide, and said that she “partially, maybe” develops solicitations and has a role. Ms. Zaworski also said that “in her little area, [she] absolutely” “oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director” when she received RFEs for \$5,000 and was able to reduce the originally quoted price by 75% to 95%, which she said she had done numerous times.

Ms. Zaworski initially said that she “serves as official agency spokesperson” by providing diligent and timely information, customer service, advice, and recommendations to vendors and a variety of State personnel requesting expenditures. Ms. Zaworski later retracted that statement saying that she is not a spokesperson, but she speaks on behalf of the BOPM by working diligently with regard to customer services.

Ms. Zaworski claimed that she does “analyze facility management resources and reallocate resources,” and further said that everything starts and ends with RFEs, which is a request for purchase. Ms. Zaworski also explained that she coordinates resources and evaluates the resource requests. When asked if she “oversees, under the guidance from the BOPM Chief Financial Officer and Deputy Director, the property management budget,” Ms. Zaworski said that she was not in charge of budgeting for BOPM, but she was tasked with budgeting for the specific purchase or project assigned to her.

Ms. Zaworski also discussed duties she performed, even though those duties were removed in the 2016 position description update. First, Ms. Zaworski said that she “reports regularly on projected versus actual cost savings,” based on a time when she secured a reduced quote for an RFE. Second, Ms. Zaworski stated that she “works with State leasing personnel and transaction brokerage teams to evaluate lease portfolios and restructure existing leases or find new leases if appropriate” because she helped create a master list of leases and unoccupied State-owned buildings. Third, Ms. Zaworski claimed that she “establishes key performance measures for property management initiatives and tracks projections against results,” by providing reports regarding her work product to her supervisor.

In his OEIG interview, Mr. Schierholz said that he could not recall ever meeting or talking to Ms. Zaworski, and that he did not assign duties to her. He said that he believed she had similar duties to Mr. Walsh, with respect to working at the Thompson Center, as well as some administrative duties related to work orders, invoices, and bill payments. Mr. Potts said that he knows of, but has never met Ms. Zaworski, does not know what duties she performs, and has never assigned duties to her.

## **F. Reporting Structure of Regional Client Manager Positions**

In the original and up to the 2016 Regional Client Manager position descriptions, the immediate supervisor for each Regional Client Manager is listed as the Deputy Director of

Property Management. In addition, the organizational charts for CMS, from the inception of the Regional Client Manager position, list the Regional Client Managers as reporting directly to the Deputy Director of BOPM, who reports directly to the Director of CMS or the Assistant Director.

Both Mr. Schierholz, the former Deputy Director of the BOPM, and the current Deputy Director, Mr. Potts, acknowledged that they did not directly supervise any of the Regional Client Managers, nor did they know many of them or know what the position description duties were. Neither were sure exactly who directly supervised all the Regional Client Managers, but they knew it varied regionally. Each of the Regional Client Managers were asked who their direct supervisors were, and the following table lists out those individuals based on the Regional Client Manager interviews.

<b>Position Title</b>	<b>Incumbent</b>	<b>Direct Supervisor(s) (Per Interviews)</b>
Regional Client Manager 1	Brian Walsh	[Employee 2] (10/2015-2/2016) [Employee 7] & [Employee 8] (2/2016-present)
Regional Client Manager 2	Elzbieta Zaworski	[Employee 2] (1/2016-2/2016) [Employee 1] (2/2016-present)
Regional Client Manager 3	Emil “Alvarez” Jones	[Employee 10] (Sept. 2015-unknown) Assistant Facilities Manager “[REDACTED]” [Employee 4] (unknown-present) <sup>46</sup>
Regional Client Manager 4	John Danna II	[Employee 1] (6/2015-10/2015) [Employee 11] (10/2015-present)
Regional Client Manager 5	Ross Breckenridge	[Employee 3] (8/2015-present)
Regional Client Manager 6	Bradley Hermes	[Employee 11] (7/2016-present)
Regional Client Manager 7	Jeffrey Stevenson	[Employee 11] (2/2016-present)

During this investigation, the OEIG interviewed CMS Bureau of Personnel Deputy Director Deborah Hensey on September 26, 2017. Ms. Hensey has served as the Deputy Director of Personnel since January 14, 2015 and also served in the position from 2001 through 2003. Ms. Hensey stated that she has 32 years of State service and is planning to retire in December 2017. As Deputy Director of Personnel, Ms. Hensey stated that she has oversight of all things related to

<sup>46</sup> When interviewed by the OEIG on June 21, 2017, Mr. Jones was unable to provide dates more specific than approximately one year of supervision by [Employee 10] and [Employee 4], and approximately less than six months for “[REDACTED].” Mr. Jones did not know “[REDACTED]’s” full name. Based on the title he recalled, it is likely that he was referring to Assistant Facilities Manager [Employee 9].

the Personnel Code and rules, transactions, hiring, classifications, *Rutan* and Special Master matters, as well as CMS Internal Personnel. Ms. Hensey said that she directly supervises ten employees, indirectly supervises 85 employees, and reports directly to CMS Assistant Director Markus Veile and CMS Director Michael Hoffman.

During her interview, the OEIG informed Ms. Hensey to whom the Regional Client Managers were actually reporting. Ms. Hensey looked up the above-listed supervisors in the CMS system and stated that it was inappropriate for five of the individuals to directly supervise Regional Client Managers based on the supervisor's classification status. According to Ms. Hensey:

- [Employee 11] should not have been a supervisor of a 4d(3) exempt position because she is in a term appointment.
- [Employee 2] should not have been a supervisor of a 4d(3) exempt position because he is in a term appointment.
- [Employee 1] and [Employee 4] are Public Service Administrators (PSA), certified positions, and thus should not be directly supervising a 4d(3) exempt position.
- [Employee 7] is an Executive II, also in a certified position, and thus it is inappropriate for her position to be directly supervising a 4d(3) exempt position.<sup>47</sup>

#### **G. Regional Client Manager Performance Evaluations**

In September 2017, the OEIG requested current performance evaluations<sup>48</sup> for each of the Regional Client Managers, and in response, received at least one evaluation given during their employment as Regional Client Managers for all but Mr. Walsh and Mr. Jones.<sup>49</sup>

Part I of each evaluation entails a review of the job description, and states "Review of the employee's job description is required to ensure the accuracy of the job description. Does the job description accurately and directly relate to the objectives listed in the next part of this evaluation form?" The reviewer is then required to check either "Yes" or "No," and if s/he checks "No," s/he is required to attach a revision of the position description. For each of the evaluations received, the reviewer checked "Yes" indicating that the job description accurately related to the objectives.

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<sup>47</sup> Ms. Hensey could not locate [Employee 8's] title in the CMS system.

<sup>48</sup> Evaluations are completed on CMS Form 201MC.

<sup>49</sup> As of September 2017, no performance evaluations were provided for either Mr. Walsh or Mr. Jones who had both been working at CMS for two years, at that point.

Position Title	Incumbent	Date of Evaluation	Supervisor's Signature
Regional Client Manager 2	Elzbieta Zaworski	January 24, 2017	[Employee 1]
Regional Client Manager 4	John Danna II	September 23, 2016	[Employee 11]
Regional Client Manager 5	Ross Breckenridge	January 3, 2017	[Employee 3]
Regional Client Manager 6	Bradley Hermes	October 14, 2016	[Employee 11]
Regional Client Manager 7	Jeffrey Stevenson	April 11, 2017	[Employee 11]

The evaluation form has a section labeled “APPRAISAL OF OBJECTIVES” and instructs the supervisor to “document objectives set for the employee and to indicate the employee’s accomplishments toward those objectives.” This report lists out the objectives written for the five evaluations provided to the OEIG during this investigation. As shown below, none of the objectives, nor the evaluator comments, resemble the duties set forth in the position description used to establish a 4d(3) exempt status.

#### **1. Regional Client Manager Elzbieta Zaworski**

- Serves as Regional Client Manager 2 for Region 2. Assists in the oversight and management of those facilities. Confers with administrative staff on implementation of approved policies.<sup>50</sup>
- Oversees the inspection and safety concerns of buildings within the region.
- Works with outside agencies on assessing space needs for the respective agency, directs efforts to adhere to CMS established space standards.
- Facilitates the procurement of requested services and commodities by coordinating with procurement specialist and requesters to ensure optimal pricing and efficiency.
- Directs program budget and controls the allocation of expenditures; reviews current agency programs to define areas requiring increases in appropriations for program expansion; makes program and policy recommendations. Makes decisions regarding appropriation of funds and allocations to carry out policy and agency programs.
- Develops and monitors fiscal control measures to ensure each program area’s adherence to budget resources. Evaluates equipment, commodities, and other operational needs, and authorizes purchases to meet those needs.

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<sup>50</sup> Ms. Zaworski’s evaluation stated that she “Met” each of these objectives.

## 2. Regional Client Manager John Danna II

- Serves as Client Manager for Central and Southern Illinois. Ensures coordination with external agencies in formulating policies and ensuring operational efficiencies in leased and state-owned facilities under CMS jurisdiction.  
Evaluator comment: Over this past year, John has been instrumental in expanding and redefining the site evaluation process. His work has allowed the bureau to report performance metrics based on the evaluation criteria he developed.
- Coordinates with vendors, contractors, lessors, and private and public entities to identify opportunities in efficiencies and/or deficiencies in work product.  
Evaluator comment: John has worked successfully with appropriate agency staff to address building operations and services provided by vendors.
- Identifies and completes site inspections for leased facilities to ensure performance meets contractual and lease obligations.  
Evaluator comment: John has been effective in monitoring vendor performance within leased properties by completing site inspections and communicating with tenant agencies, lessors, and facility staff to address any performance issues.
- Complete *Rutan* interview training and assist with interviews for facility maintenance staff.  
Evaluator comment: John completed required *Rutan* interview training during this year and has participated in a number of interviews for facility management staff. He is always willing to adjust his schedule to accommodate any request that is made for his participation.
- Began understanding and training on the security system processes and programs used by CMS including identification badge processes and computer software systems.  
Evaluator comment: John has begun training with the appropriate agency staff to learn the associated processes and procedures.

## 3. Regional Client Manager Ross Breckenridge

- Serves as Client Manager for Southern Illinois and Central. Ensures coordination with external agencies in formulating policies and ensuring operational efficiencies in leased and state-owned facilities under CMS jurisdiction.  
Evaluator comment: Ross has done (sic) good job of working with other agencies to enhance policies and operational efficiencies in state-owned and leased facilities.
- Coordinates with vendors, contractors, lessors, and private and public entities to identify opportunities in efficiencies and/or deficiencies in work product.  
Evaluator comment: Ross has worked will (sic) with the agency staff to address building operations and services provided by vendors to ensure the building and staff needs are satisfied.
- Identifies and completes site inspections for leased facilities to ensure performance meets contractual and lease obligations.  
Evaluator comment: Ross has completed numerous site inspections to verify that performance meets contractual and lease obligations. Ross has also completed several ADA compliance inspections to verify that the location meets ADA requirements.

#### **4. Regional Client Manager Bradley Hermes**

- Serves as Client Manager for Central Illinois. Ensures coordination with external agencies in formulating policies and ensuring operational efficiencies in leased and state-owned facilities under CMS jurisdiction.  
Evaluator comment: Over this past year, Brad has been instrumental in providing space planning layouts for the Bureau. He has learned how to use Autocad 2016 software to design or modify the layouts. He has a strong understanding of the Administrative Code related to space planning so that the work product produced is consistent with the standards.
- Identifies and completes site inspections and related analysis for the Property Management Business Case (PMBC) tool utilized for space planning and RFI development.  
Evaluator comment: Brad has been trained in using the PMBC tool and has completed numerous PMBCs. His work has provided an accurate understanding (sic) the facility conditions as part of the leasing process.
- Analyzes construction plans and bid documents to determine fair and reasonable costs.  
Evaluator comment: Brad has been responsible for conducting Fair and Reasonable analysis of construction improvements for lease facilities. His work has been very thorough and has resulted in cost savings to the State.

#### **5. Regional Client Manager Jeffrey Stevenson**

- Serves as Client Manager for Central and Southern Illinois. Ensures coordination with external agencies in formulating policies and ensuring operational efficiencies in leased and state-owned facilities under CMS jurisdiction.  
Evaluator comment: Over the past year, Jeff has been instrumental in expanding and redefining the site evaluation process. His work has allowed the bureau to report performance metrics based on the evaluation criteria developed. Jeff's implementation of the new evaluation tool has assisted the Bureau in refining the tool for better outcomes.
- Coordinates with vendors, contractors, lessors, and private and public entities to identify opportunities in efficiencies and/or deficiencies in work product.  
Evaluator comment: Jeff has worked successfully with appropriate agency staff to address building operations and services provided by vendors.
- Identifies and completes site inspections for leased facilities to ensure performance meets contractual and lease obligations.  
Evaluator comment: Jeff has been effective in monitoring vendor performance within leased properties by completing site inspections and communicating with tenant agencies, lessors, and facility staff to address any performance issues.
- Began understanding and training on additional property management policy and procedures.  
Evaluator comment: Jeff has begun training with the appropriate agency staff to learn the associated processes and procedures.

## **H. Similarities with the *Rutan*-Covered Facilities Manager Positions**

When interviewed by the OEIG on March 9, 2016, former BOPM Deputy Director Terry Schierholz stated that he believed the Regional Client Manager positions were similar to the *Rutan*-covered Facilities Manager positions in the BOPM. He stated that Regional Client Managers and Facilities Managers perform similar duties in managing buildings and ensuring building upkeep, and that any duty that is assigned to a Regional Client Manager could also be assigned to a Facilities Manager.

### **1. Facilities Manager Position Duties**

The OEIG obtained and reviewed position descriptions for Facilities Managers and Assistant Facilities Managers. In the position descriptions reviewed, the Facilities Managers and Assistant Facilities Managers were listed as *Rutan*-covered PSA positions, and included the following as the major duties of the positions:

- manages all facility operations for assigned facilities, including maintenance and repair, preventive maintenance, grounds keeping, janitorial services, and property control;
- identifies and reports on currently utilized and surplus space;
- conducts monthly on-site inspections of assigned facilities;
- implements BOPM policies for all assigned facilities;
- interprets State and Federal guidelines regarding building procedures;
- confers with management to implement maintenance and repair programs;
- confers with vendors and user agency staff to address and pass on facility needs to the BOPM;
- supervises facility maintenance staff;
- interprets and implements CMS policy regarding user agency space requirements;
- develops and sets goals for the efficient operation of assigned facilities;
- conducts analysis of property management programs to identify and resolve deficiencies in property management services;
- assists in developing the annual budgets for assigned facilities;
- reports on budget cost reduction goals and on quality and timeliness of delivery of goods and services;
- assists BOPM leasing staff in evaluation of leases; and
- monitors physical and contractual agreements within leases and reports on status.

Each of the Facilities Manager positions is responsible for supervising facility management staff in their assigned facilities and regions. Some of the position titles they supervise, for example, include Stationary Engineers, Office Associates, Building/Grounds Maintenance staff, Electricians, and Janitors.

## **2. Interview of [Employee 3]**

On July 8, 2016, the OEIG interviewed [Employee 3],<sup>51</sup> who stated that [identifying information redacted].<sup>52</sup> [Employee 3] stated that he supervises approximately 120 subordinates, including Facilities Managers, and reports directly to [Employee 1].

According to [Employee 3], Facilities Managers oversee the day to day operation of the State owned and leased buildings assigned to them. [Employee 3] said that he also supervises Ross Breckenridge, who is a Regional Client Manager. [Employee 3] said that he was not involved with the hiring of Mr. Breckenridge, nor could he recall any specific duties listed in the position description for Mr. Breckenridge. Instead, he stated that he received guidance from Mr. Schierholz regarding what Mr. Breckenridge's duties should be.

According to [Employee 3], Regional Client Managers have oversight over approximately 100 State owned or leased buildings each. At that time of his interview, [Employee 3] said Mr. Breckenridge was acting in a Facilities Manager role, and that the plan was to have Mr. Breckenridge take over the Facilities Manager's duties as well as cover PMBC leases. [Employee 3] stated that "on paper" the Facilities Manager and Regional Client Manager positions are different but in "actuality" the duties are similar. [Employee 3] acknowledged that Facilities Manager is a PSA position while the Regional Client Manager position is classified as a SPSA.

### **I. The Hiring of Regional Client Managers**

The OEIG interviewed CMS Bureau of Personnel Deputy Director Deborah Hensey, Governor's Office Manager of Human Resources Office Operations Judith McAnarney, and former BOPM Deputy Director Terry Schierholz regarding how these seven Regional Client Managers had been hired. The OEIG also reviewed the qualifications of each of the Regional Client Managers and interviewed each of them about how they were hired.

#### **1. Regional Client Manager Qualifications**

In the CMS position descriptions, there is a "Box 19" which sets forth the required and desired qualifications for successful performance in the position. For the Regional Client Managers, the qualifications regarding education and experience have remained the same for the life of the positions. Those qualifications include: "requires knowledge, skill, and mental development equivalent to completion of four years of college, preferably with coursework in business management, facility management or a related field; requires four years of progressively responsible administrative experience in a public or private organization, preferably with experience in business management, real estate, asset management or facility management." The OEIG reviewed the CMS-100 Applications submitted by each of the incumbent Regional Client Managers for education and work experience. Based on the limited information provided on those

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<sup>51</sup> This is the position title that [Employee 3] identified in his interview although it does not match the title listed on his position description obtained by the OEIG in 2017.

<sup>52</sup> Although [Employee 3] informed the OEIG that he has served [identifying information redacted] for approximately five years as of the date of his interview, the BOPM organizational charts provided to the OEIG by CMS list [Employee 3] as [redacted].

applications,<sup>53</sup> they all appeared to meet the education requirement, and they all arguably met the work experience requirement, at the time of their hires.<sup>54</sup>

## **2. Interview of CMS Bureau of Personnel Deputy Director Deborah Hensey regarding the Hiring of Regional Client Managers**

With regard to hiring into 4d(3) exempt positions, Ms. Hensey explained that candidates can be recommended to her office by a number of avenues, including: the Governor's Office, Agency Directors, Bureau Deputy Directors, General Counsels, agency personnel officers, and once in a while the positions are posted for the public to apply. Ms. Hensey said that the Governor's Office approves all 4d(3) exempt hires, as well as the salaries for those hires. She said she assumes that someone has been in contact with the Governor's Office on a candidate's behalf when she receives a recommendation.

Ms. Hensey said that the Governor's Office both recommends candidates for specific positions within agencies, and sends candidates to her attention to seek out any openings that might fit the candidate. Ms. Hensey said that her main contact at the Governor's Office regarding recommendations for 4d(3) exempt hires is Judith McAnarney, and that Ms. McAnarney is the one who passes recommendations to her. Ms. Hensey said that she usually provides a position description to Ms. McAnarney when a 4d(3) exempt position is vacant, and that she believes that Ms. McAnarney performs a cursory review of the potential candidates' qualifications based on those position descriptions prior to recommending their hire to Ms. Hensey.

Ms. Hensey said that recommended candidates are interviewed informally, usually by the Deputy Director of the Bureau who would employ the candidate. Ms. Hensey said that she frequently participates in those interviews as well, to ask the appropriate personnel-related questions, but that her role in the interviews does not involve evaluating the candidates' expertise related to the job duties they would be performing. She said that it is up to the Bureau in which the person will work to make sure they are qualified. Ms. Hensey is aware of some instances when they have informed the Governor's Office that a Governor's Office candidate was not qualified for the 4d(3) exempt position, and that person was not hired for the recommended position.

Ms. Hensey said that she sat in on several Regional Client Manager interviews for the current incumbents, including: Mr. Walsh, Mr. Danna, Mr. Hermes, and Mr. Stevenson.

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<sup>53</sup> As noted below in the discussion of each Regional Client Manager's hiring, their CMS-100 Applications were submitted either shortly before, or even after, they started working in Regional Client Manager positions.

<sup>54</sup> Mr. Jones only held his prior CMS position for one year, 11 months before being hired as a Regional Client Manager. However, his CMS-100 indicated 10.5 years of work history as a network administrator at a private company prior to that position. Combined, his work experience arguably meets the minimum work experience qualifications.

### **3. Interview of Governor's Office Manager of Human Resources Office Operations Judith McAnarney regarding the Hiring of Regional Client Managers**

On November 8, 2017, the OEIG interviewed Governor's Office Manager of Human Resources Office Operations Judith McAnarney who stated that she has been in her current position since April of 2015. Ms. McAnarney said that she has 34 years of total State service and was previously employed as the Director of Human Resources at the Illinois Office of the Comptroller. Ms. McAnarney said that her present duties include serving as a liaison to all Human Resource departments for all of the agencies under the Governor's Office, including CMS. Ms. McAnarney said that there are "close to 1,000" double-exempt "Governor's Positions," and her role is to "put qualified people into those jobs."

According to Ms. McAnarney, the Governor's Office considers double-exempt positions to be Governor's Office positions that can be filled at its pleasure. The Governor's Office approves all 4d(3) exempt hires and the salaries for those positions. With regard to filling those positions, Ms. McAnarney said that the Governor's Office receives resumes a variety of ways including: from people who wish to work for the administration, on behalf of people who are connected to the administration, and from agencies that want to fill specific positions. She said that she is responsible for maintaining the resumes received by the Governor's Office, and then forwards them on to the appropriate agency when she learns of a position that might be appropriate for a candidate. Ms. McAnarney said that she sometimes requests position descriptions to determine if candidates would be a good fit for positions. She said that if an agency asks for candidates for an open position, she requests a position description to match candidates based on their resumes. Ms. McAnarney stated that she does not review the duties of the position to see if they justify a double-exempt status, and that it is the responsibility of the hiring agency to conduct the review. Ms. McAnarney said she quickly looks at the duties and the qualifications in the position description to determine whether the candidate qualifies for the position. However, she said that it is ultimately the interview by the agency that determines whether a candidate is qualified for a position.

With regard to CMS hires, Ms. McAnarney said that she generally sends recommendations to Ms. Hensey. According to Ms. McAnarney, there are some candidates that the Governor's Office wants hired into double-exempt positions, and the Governor's Office will work to find positions for "like minded individuals." She said that she has received rejections from CMS after referring candidates for double-exempt positions, but could not recall a specific instance.

### **4. Regional Client Manager Brian Walsh's Hiring**

In his OEIG interview, Mr. Walsh stated that he was not aware of the Regional Client Manager position prior to receiving a phone call from a woman, whose name he could not remember, asking him to interview for a position at CMS. He said that he did not apply for a position, but he had sent his resume to someone at CMS.<sup>55</sup> Mr. Walsh could not recall who he sent his resume to, or how he knew where to send his resume. He said that he interviewed with [Employee 2] in person, and that Mr. Schierholz attended the interview by video-conference. Mr.

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<sup>55</sup> Mr. Walsh stated that he did eventually submit a CMS-100 Application. Records show that this was dated September 23, 2015.

Walsh said that he believed he was being interviewed to replace a retiring employee, and that his duties would include performing ADA inspections.

According to Ms. Hensey, Mr. Walsh's recommendation came to her from Ms. McAnarney. Ms. Hensey recalled that she sat in on the interview with Mr. Schierholz and [Employee 2], and that she and Mr. Schierholz attended via video-conference. She said that she and Mr. Schierholz would likely have received and reviewed Mr. Walsh's resume from Ms. McAnarney prior to the interview but Mr. Schierholz would have ultimately decided that Mr. Walsh was qualified. Ms. Hensey said that she was not aware of who might have helped Mr. Walsh get a recommendation from the Governor's Office.

In her interview with the OEIG, Ms. McAnarney said that she received Mr. Walsh's resume from [redacted], an employee of [elected State official]. She said that she forwarded Mr. Walsh's resume to either Ms. Hensey or Mr. Schierholz, but did not recall whether she did so because of a specific vacancy or because CMS had asked for candidates to fill the Regional Client Manager position.

Mr. Schierholz, in his OEIG interview, said that he did not know how Mr. Walsh became a candidate for a Regional Client Manager position. He said that he vaguely recalled reviewing a resume for Mr. Walsh, but not any details about it. He said that he may have interviewed Mr. Walsh with Ms. Hensey, and that he and Ms. Hensey would have determined that Mr. Walsh was qualified. Mr. Schierholz believed he explained during Mr. Walsh's interview that the Regional Client Manager's job involved taking care of issues at assigned facilities.

## **5. Regional Client Manager Elzbieta Zaworski's Hiring**

In her OEIG interview, Ms. Zaworski said that she had sent in numerous applications for State positions and was eventually hired as a Strategic Sourcing Manager for CMS but that her position was eliminated without notice. Approximately three weeks after being unemployed, she received a telephone call from CMS employee "Trisha" Pineda, informing her of the Regional Client Manager position opening, and asking if she was interested. Ms. Zaworski said that she supplied CMS with a resume and application at that point, and was then interviewed by [Employee 2] and [Employee 9]. Ms. Zaworski submitted a CMS-100 Application on January 4, 2016, and started as a Regional Client Manager on January 19, 2016.

Ms. Hensey did not know anything about Ms. Zaworski's hiring as a Regional Client Manager, except that she had previously worked for CMS, and her position had been eliminated.

Ms. McAnarney said that she recalled Ms. Zaworski's name, but did not believe she had anything to do with Ms. Zaworski's hire as a Regional Client Manager. She said that although she might not have had anything to do with the hiring process, the Governor's Office would still have had to approve the hire, and that she might have been involved in that.

Mr. Schierholz said that he did not know how Ms. Zaworski became a candidate for the Regional Client Manager position, and that he did not review her qualifications or interview her.

He thought that the Bureau of Personnel might have interviewed her and reviewed her qualifications, but he did not know for sure if that happened.

## **6. Regional Client Manager Emil “Alvarez” Jones’s Hiring**

In his OEIG interview, Mr. Jones said that he held several positions at CMS prior to becoming a Regional Client Manager, including working for the Business Enterprise Program, and working as a “general PSA.” Regarding his duties in that Business Enterprise Program position, Mr. Jones said “I couldn’t tell you exactly what the job duties were, it was more or less a helper.”

Regarding how he became a Regional Client Manager, Mr. Jones said he first met with [Employee 2], who told him that Mr. Collins was retiring, and they needed someone to be a stopgap until another Facilities Manager could be hired and trained to fill Mr. Collins’s position. Mr. Jones said that he did not think he specifically applied for his position, and that he understood his receiving the Regional Client Manager position was a transfer. However, he said that he eventually did fill out a standard CMS employment application, but that he could not recall who asked him to, when he completed it, or where he sent it. He said that he was interviewed by [Employee 2] and [Employee 9], and that he was told he would be taking over as a temporary Assistant Facilities Manager, and that his duties would be to fill in until a full-time Facilities Manager was hired to replace Mr. Collins. Mr. Jones said that he did not know why his application was dated September 16, 2015, when the start date as Regional Client Manager listed on his personnel history is listed as September 8, 2015.

Ms. Hensey said that Mr. Jones is related to [redacted], but that she does not know who recommended him for consideration. She said that she remembered discussing Mr. Jones with Ms. McAnarney, and that Mr. Jones was on an initial termination list during the gubernatorial administration change, because he was not performing the duties assigned to him as an Assistant Legislative Liaison at the time, and that they discussed finding Mr. Jones a new position in order to prevent a break in his service with the State. Ms. Hensey did not know who interviewed Mr. Jones, but said that it was up to Mr. Schierholz to ensure he was qualified.

Ms. McAnarney recalled that Mr. Jones was having performance issues in his previous CMS position, but that CMS did not want to “let him go.” She recalled hearing that CMS believed that Mr. Jones would be better suited to the Regional Client Manager position than his legislative position. She said that she did not believe she ever saw Mr. Jones’s resume, and that the determination that he was qualified to fill the Regional Client Manager position would have occurred at the agency level.

Mr. Schierholz said that he did not know how Mr. Jones became a candidate for the Regional Client Manager position, and that he did not review his qualifications or interview him. He said that the Bureau of Personnel might have reviewed Mr. Jones’s qualifications and interviewed him to determine if he was qualified, but he did not know if that happened. He said that with double-exempt positions, there were “times I was never consulted.”

## **7. Regional Client Manager John Danna II's Hiring**

Regarding his hiring as a Regional Client Manager, Mr. Danna told the OEIG that he had been applying for numerous State positions, but did not recall if he saw the Regional Client Manager position posted or specifically applied for it. He said that he received a call from a female employee from the CMS Bureau of Personnel asking him if he was interested in interviewing for a position. He said that he interviewed with Mr. Schierholz and a female CMS Personnel employee. He said that his understanding of the duties he would be performing was that he would be inspecting State leased facilities, and eventually inspecting State owned facilities as well. Mr. Danna submitted a CMS-100 Application on June 5, 2015, and started as a Regional Client Manager on June 15, 2015.

Ms. Hensey said that she believes Mr. Danna's recommendation for hire came from Ms. McAnarney. She said that she participated in Mr. Danna's interview, but that Mr. Schierholz ultimately decided Mr. Danna was qualified.

Ms. McAnarney said that she received Mr. Danna's resume from Sangamon County [official], who asked her to keep Mr. Danna in mind for any openings that might occur. She did not recall whether she reviewed Mr. Danna's resume against the Regional Client Manager position description. She said that she could not recall whether CMS requested resumes to fill positions, or whether she sent Mr. Danna's resume with others for CMS to consider for positions she knew were open, and that she believed could fit. Again, she said it is up to the agencies to determine whether candidates are qualified for positions.

Mr. Schierholz said that he did not know how Mr. Danna became a candidate for the Regional Client Manager position. He said that he vaguely recalls reviewing Mr. Danna's resume for qualifications and that he and Ms. Hensey interviewed Mr. Danna. He said that the duties of the Regional Client Manager discussed during Mr. Danna's interview included performing ADA inspections, security inspections, and space requirement inspections. Mr. Schierholz said that he and Ms. Hensey determined that Mr. Danna was qualified.

## **8. Regional Client Manager Ross Breckenridge's Hiring**

In his OEIG interview, Mr. Breckenridge said that prior to becoming a Regional Client Manager, he worked for IDOT as an Administrative Manager.<sup>56</sup> He said that he was informed that IDOT would be putting someone else in his position, and was told by IDOT Chief of Staff Matt Magalis that he would be receiving a phone call about moving to a different position within the State. He said that approximately a week later, he received a phone call from a male employee of the Governor's Office, informing him to report to CMS for his first day of work in his new position. He said that he did not learn what the position duties would be until he reported for his first day of work, and at that time was instructed by [Employee 3] that he would be conducting facility inspections, ADA inspections, and responding to maintenance issues at leased buildings. He did not recall being interviewed for the position. He submitted a CMS-100 Application on August 24, 2015, but started as a Regional Client Manager on August 19, 2015.

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<sup>56</sup> Mr. Breckenridge also previously held a Staff Assistant position at IDOT.

Ms. Hensey said that she recalled Mr. Breckenridge was being let go from his IDOT position and that Ms. McAnarney asked CMS to consider him for a Regional Client Manager position. She said that she did not believe Mr. Breckenridge was interviewed. She said that she remembered calling Mr. Breckenridge about the position with Mr. Schierholz. She did not recall if they discussed Mr. Breckenridge's qualifications during the call, but thought that they discussed a start date and work location. She said that it was ultimately up to Mr. Schierholz to determine that Mr. Breckenridge was qualified.

Ms. McAnarney said that she recalled hearing that Mr. Breckenridge was not working out in his IDOT Administrative Manager position, and that when Mr. Breckenridge learned that he was going to be let go from IDOT, the Governor's Office started to receive pressure to keep Mr. Breckenridge employed. She could not recall who received the pressure or who was putting the pressure on, but did recall that either Mr. Breckenridge, or someone close to Mr. Breckenridge, was having health issues and that someone contacted the Governor's Office to advocate on his behalf to keep him employed with the State. She said that she recalled having discussions about Mr. Breckenridge with either [Employee 12] or the IDOT Chief of Staff. She said that she believes she reached out to Ms. Hensey about any vacancies around the Collinsville area, where Mr. Breckenridge lives, and that the Regional Client Manager position in that location was identified. She said that she recalled Mr. Schierholz meeting with Mr. Breckenridge and saying he was capable of doing the job. She said that she did not recall seeing Mr. Breckenridge's resume.

Mr. Schierholz said that he believes that Mr. Breckenridge was let go from IDOT and brought over to CMS to fill a Regional Client Manager position, but he did not recall reviewing Mr. Breckenridge's qualifications or interviewing him prior to him starting. He said that he went to meet Mr. Breckenridge with [Employee 3] and [Employee 6] after Mr. Breckenridge started, to familiarize him with the duties he would be performing. He said that if anyone had determined that Mr. Breckenridge was qualified prior to hire, it would have been Ms. Hensey or someone at CMS Bureau of Personnel.

## **9. Regional Client Manager Bradley Hermes's Hiring**

Regarding his hiring as a Regional Client Manager, Mr. Hermes told OEIG investigators that he had applied for several CMS positions, and about a year later he received a call from a woman who said they had a job that might fit him. He could not recall who the woman was, and he could not recall if he had specifically applied for the Regional Client Manager position. He said that Mr. Schierholz and CMS BOPM employee [Employee 14] conducted his interview. He said that, during the interview, he was told the duties of this position would be working on leasing transactions and facilities work. He submitted a CMS-100 Application on December 22, 2014, and started as a Regional Client Manager on July 6, 2015.

Ms. Hensey said that she believes that Mr. Hermes might have been a legislative referral to the Governor's Office, and that Ms. McAnarney likely recommended him to CMS. She said that she believes that she and Mr. Schierholz interviewed Mr. Hermes, and that Mr. Schierholz determined that Mr. Hermes was qualified.

Ms. McAnarney said that she recalled Mr. Hermes's name and resume, but did not recall how she received the resume, or from whom. She said that she believes she sent his resume to CMS with a batch of resumes, and did not recall if she compared his resume to the Regional Client Manager position description.

Mr. Schierholz said that he believed Mr. Hermes was a Governor's Office referral candidate. He said that he reviewed Mr. Hermes's application and resume, and interviewed Mr. Hermes with Ms. Hensey. He said that the duties of the Regional Client Manager position discussed during the interview included replacing a retiring staff member who was handling a lot of the architectural drawings for space requests. He said that he and Ms. Hensey determined that Mr. Hermes was qualified for the position.

#### **10. Regional Client Manager Jeffrey Stevenson's Hiring**

Regarding his hiring as a Regional Client Manager, Mr. Stevenson said that he recalled applying and interviewing for an inspection-related position at the Illinois Department of Agriculture, which he did not receive. He said that he then received a phone call in early 2016, from a woman whose name and position he could not recall, asking if he would be interested in working at CMS. He said he was interviewed by Mr. Schierholz and a woman whose name he could not recall. He said that the duties discussed during his job interview included conducting facility inspections throughout an assigned region. Mr. Stevenson submitted a CMS-100 Application on February 5, 2016, and started as a Regional Client Manager on March 1, 2016.

Ms. Hensey said that Ms. McAnarney referred Mr. Stevenson to her but she did not know who assisted Mr. Stevenson with obtaining a Governor's Office recommendation. Ms. Hensey recalled discussing the fact that Mr. Stevenson was in a relationship with former [elected official's] daughter. She said that she believed that she and Mr. Schierholz interviewed Mr. Stevenson, and that Mr. Schierholz determined Mr. Stevenson was qualified.

Ms. McAnarney said that she "kind of" remembers Mr. Stevenson, but does not recall how he became a candidate or how she received his resume. She said that she does not remember if she sent his resume to CMS in response to a request for candidates from CMS or as a request that he be considered for any vacancies.

Mr. Schierholz said that he believed Mr. Stevenson became a candidate through the CMS Bureau of Personnel. He said that he reviewed Mr. Stevenson's resume and application and interviewed Mr. Stevenson with Ms. Hensey. He said that he and Ms. Hensey determined that Mr. Stevenson was qualified. He said that they discussed that Mr. Stevenson would be performing facility management duties during the job interview.

#### **J. CMS's Updates of the Regional Client Manager Position Descriptions**

Per 80 Ill. Admin. Code 1.142(c), the Director of CMS is required to inform the CSC in writing of all changes to exempt positions in "essential functions, reporting structure, working title, work location, position title, position number, or specialized knowledge, skills, abilities, licensure or certification." The OEIG obtained documents regarding changes made to the Regional Client

Manager position descriptions, and interviewed CMS staff to determine the process of updating position descriptions and who is responsible for making such changes.

## **1. Review of the Regional Client Manager Position Descriptions Updates**

The Regional Client Manager position descriptions were created and sent to the CSC for review in 2004. In September 2007, two of the positions were abolished, and the remaining seven were clarified so that each position was reassigned from covering specific agencies to covering specific regions of the State. These changes were all sent to the CSC. In November 2016, the CSC received clarifications for all seven Regional Client Manager position descriptions updating the duties for these positions. None of these clarifications, however, altered CMS's *Rutan* exempt determination of the position.

Prior to November 2016, the CSC received from CMS a number of clarifications pertaining to these seven Regional Client Manager positions regarding "Work Location" changes and several minor adjustments to the job duties or functions.

There were just two clarifications to the Regional Client Manager 5 position that the CSC did not have in its records involving work location changes. The first was a work location change from Sangamon County to Cook County effective June 1, 2008.<sup>57</sup> The second was a work location change from Sangamon County to St. Clair County effective June 16, 2015 just prior to Mr. Breckenridge starting in the position in August 2015.

## **2. Interview of CMS Bureau of Personnel Deputy Director Deborah Hensey**

In her OEIG interview, Ms. Hensey was asked about the procedure and requirements for updating position descriptions for 4d(3) exempt positions.

Ms. Hensey said that each Bureau has a Personnel Liaison whose job it is to work with the Bureau Deputy Director regarding personnel issues. According to Ms. Hensey, position description updates are initiated at the level of the Bureau employing the position. She said that any changes are made in writing and submitted to CMS Internal Personnel, under the oversight of Acting Human Resources Manager Tricia Pineda, for review. The paperwork is then submitted to CMS External Classifications staff to ensure that the changes do not take the position out of the current class specification. She said that any questions from Internal Personnel or External Classifications about the changes are raised with the Bureau's Personnel Liaison.

According to Ms. Hensey, it is the Personnel Liaisons and the Deputy Directors' job to ensure that position descriptions are up to date and that employees are performing the duties in the position descriptions. While Ms. Hensey said that it is healthy to review position descriptions every few years to ensure that changes do not need to be made, she said that nobody at CMS Personnel is ensuring that is happening. According to Ms. Hensey, updating positions descriptions has been "a struggle for years." Ms. Hensey said that they try to stress a supervisor's duty to

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<sup>57</sup> The work location was again changed back to Sangamon County effective February 19, 2015.

review employee duties, by including a box on performance evaluations requiring evaluators to certify that the job description matches the duties of the employee.

She said that it is up to each Personnel Liaison to update position descriptions as needed, and again said it is up to the Bureaus to notice that employees are performing duties outside of position descriptions. When asked if Deputy Directors and Personnel Liaisons know it is up to them to be monitoring position descriptions and employee performance of the position description duties, she said “I would hope they know they should.”

### **3. Interview of CMS *Rutan* Compliance and Administration Supervisor Denise Connelly**

On November 30, 2017, the OEIG interviewed Bureau of Personnel *Rutan* Compliance and Administration Supervisor Denise Connelly who stated that after almost 32 years of State service, she recently retired but has continued her employment on a contract due to expire on June 30, 2018. Ms. Connelly said that prior to May 2017, her duties included *Rutan* reviews for all State agencies, and supervision of a staff of four, and she reported to Deborah Hensey. Ms. Connelly stated that more recently her duties have focused on working with the Special Master, the OEIG Hiring and Employment Monitoring division,<sup>58</sup> Governor’s Office staff and the Director of CMS to fulfill requests of the Special Master for hiring monitoring purposes.

During her interview, Ms. Connelly was asked about the process for updating position descriptions. According to Ms. Connelly, the supervisors of the positions determine if any changes or updates need to be made, and the Bureau would then work with the Personnel Liaison, who would work with the Internal Personnel Unit at CMS headed by Acting Human Resources Manager Tricia Pineda. Updated position descriptions are then sent to [Employee 13] [identifying information redacted]. Ms. Connelly said that two CMS classification staff members conduct a review of the position description, and make recommendations to her with regard to the *Rutan*-exempt status of a position. With regard to 4d(3) exempt positions, Ms. Connelly said she signs the Position Review/Determination Form verifying it is a *Rutan*-exempt position but that she does not conduct any independent review because the position had previously been determined to be 4d(3) exempt.

Ms. Connelly said she was not aware that the Regional Client Manager position descriptions had been updated in 2016 and did not have any role in those updates. Ms. Connelly did acknowledge that she signed the seven Position Review/Determination Forms indicating that position had been determined to be exempt from *Rutan* after the 2016 update. Ms. Connelly said that her signature on each of them was not based on an independent review of the position; rather, she automatically signed it because the positions had been previously determined to be exempt. According to Ms. Connelly, if there had been a change to the position that may have affected the exempt status, [Employee 13] would have let her know.

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<sup>58</sup> In fiscal year 2016, the OEIG created a Hiring and Employment Monitoring (HEM) division to conduct compliance-based reviews of State hiring and employment procedures. HEM staff works closely with the Special Master regarding the ongoing Shakman litigation. The HEM division is separate and distinct from the investigations division of the OEIG.

#### **4. Interview of Former CMS BOPM Personnel Liaison Diane Bevill**

The OEIG interviewed former BOPM Personnel Liaison Diane Bevill on August 11, 2017. Ms. Bevill had been employed at CMS for 20 years and was the BOPM Personnel Liaison until her retirement in December 2016. According to Ms. Bevill, her duties included working with managers to update positions descriptions, assisting with *Rutan* interviews, drafting job classifications, and working with the BOPM Deputy Director regarding labor relations and discipline issues.

Regarding updating position descriptions, Ms. Bevill said that she worked with managers to do updates when duties had changed. She said that the updates were first sent to the Bureau of Personnel for review and approval, then the Classifications Division, and finally the Director of CMS. She said that if position descriptions were over five years old, she would send them to CMS Bureau of Personnel to ensure they were still accurate. She said that it was her responsibility as Personnel Liaison to ensure that position descriptions were reviewed and submitted to the Bureau of Personnel but that it was up to the individuals in the positions to ensure that they were performing the duties of their position descriptions.

#### **5. Interview of Former BOPM Deputy Director Terry Schierholz**

The OEIG interviewed former BOPM Deputy Director Terry Schierholz, on March 9, 2016, and November 13, 2017. Mr. Schierholz said that he did not know how position descriptions were updated, but was aware that he could work with Ms. Bevill and Ms. Hensey if the percentages of duties needed to be adjusted. He said that prior to October 2016, he had never been involved in updating position descriptions nor had he discussed the issue with Ms. Bevill, who dealt with all personnel issues within the Bureau.

Mr. Schierholz said the only time he discussed updating position descriptions with Ms. Bevill was regarding updates to the Regional Client Manager positions. According to Mr. Schierholz, in October 2016, the CSC started to inquire and was “raising hell” about the Regional Client Manager positions. Mr. Schierholz said he did not have much involvement with this issue but said that he recalled having one conversation with Ms. Bevill about updating the position descriptions, discussing some percentage changes in the duties, and recalled hearing that Regional Client Managers were not doing some of the duties listed in the position description. Mr. Schierholz also said that CMS Director Michael Hoffman had conversations with CSC Executive Director Dan Stralka regarding these updates but that he was not privy to those conversations. According to Mr. Schierholz, he was not involved with determining what changes were made to the Regional Client Manager position descriptions, but that Ms. Bevill, [Employee 1], and possibly [Employee 2] and [Employee 3], had input.

When asked, Mr. Schierholz said that he never received any guidance on updating position descriptions or whose responsibility it was to do so, and that he was never asked to update position descriptions for any positions nor did he initiate updates to any position descriptions.

## **6. Interview of BOPM Deputy Director Josh Potts**

During his October 4, 2017 OEIG interview, investigators informed Mr. Potts that Regional Client Managers did not appear to be performing exempt duties. Mr. Potts stated that prior to the interview, no one had brought this information to his attention, nor had he noticed this issue or previously reviewed the position description of the Regional Client Managers. When asked about updating position descriptions and what guidance he had been given, Mr. Potts said that he has never been given any guidance or instruction about updating position descriptions or ensuring employees are performing work consistent with their position descriptions. He said that he does not recall ever discussing updating position descriptions with current BOPM Personnel Liaison Brian Collins, but that he would ask Mr. Collins if he had any questions regarding personnel issues.

## **7. Interview of CMS Acting Director Michael Hoffman**

On December 8, 2017, the OEIG interviewed CMS Acting Director<sup>59</sup> Michael Hoffman. According to Director Hoffman, part of CMS's duties include the administering the Personnel Code for the State.

Director Hoffman was asked about the 2016 update to the Regional Client Manager position descriptions. After being shown an email between Director Hoffman and Mr. Stralka, Director Hoffman stated that he had discussions with Mr. Stralka in 2016 regarding Mr. Stralka's concern that the Regional Client Managers may have been doing duties similar to those of Transaction Managers which are also exempt positions in the BOPM. He said that it was early on in his tenure and he wanted to understand how the CSC examined 4d(3) exempt positions. Director Hoffman said that he generally knew that the Transaction Managers worked more with the landlords' owners, and the Regional Client Managers worked on the client side, but did not know details about the position. Director Hoffman said that he was not aware that the Regional Client Manager positions were updated in 2016, he did not review the position descriptions at that time, and he was not involved with any changes to the position descriptions of the Regional Client Manager. Director Hoffman also stated that during the time he was talking to Mr. Stralka, he did not look into what the Regional Client Managers were actually doing, nor did he direct anyone to do that. He said he trusted that his Deputy Directors were taking care of that.

### **K. Awareness of Regional Client Managers Not Performing Exempt Duties**

The OEIG also interviewed a number of employees, including the Deputy Directors of the BOPM, CMS Personnel employees, the Director of CMS, and the Governor's Office Human Resources Operations Manager to determine whose responsibility it was to ensure that the individuals being hired into these 4d(3) exempt positions are actually conducting work that justifies the exempt status. Every State employee interviewed regarding this subject denied knowing that these employees were not performing exempt duties, and claimed it was someone else's responsibility to have been aware of or raise this issue. The following relevant portions of their interviews are set forth below.

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<sup>59</sup> For the remainder of the report, this position will be referred to as "Director."

## 1. Interview of CMS Bureau of Personnel Deputy Director Deborah Hensey

With regard to 4d(3) exempt positions, Ms. Hensey said that if there is a need for a position at that level, the incumbents of the positions should be doing the duties contained within the position description. Ms. Hensey said that not doing the duties contained in the position descriptions is not acceptable. When investigators informed Ms. Hensey that the seven Regional Client Managers were not doing the duties consistent with the position descriptions and the 4d(3) exempt status, Ms. Hensey said she was not aware of this. Ms. Hensey said it was a “little shocking” when informed that there were current Regional Client Managers doing duties such as: setting up tables and chairs for events, and facility management duties such as maintenance, or janitorial duties.

According to Ms. Hensey, Bureau Deputy Directors and direct supervisors should be aware if employees are not doing the duties in their position descriptions, and it is their duty to notify CMS Personnel of any changes that need to be made. Ms. Hensey said that CMS Personnel rely upon Bureau Deputy Directors to notify them of these changes, and that CMS Personnel does not have “police powers.” She said that each Bureau has a Personnel Liaison whose job it is to work with the Deputy Director to ensure that position descriptions are up to date and that employees are performing the duties in the position descriptions.

OEIG investigators inquired whether, during the time she was involved with the Regional Client Managers interviews and hires, she ever asked Bureau staff if they had reviewed the position descriptions to ensure they were accurate. In response, Ms. Hensey said that the Regional Client Manager position description was “fairly recent” and if she had seen one that was dated in the 1990’s, she would have brought that to the Bureau’s attention. Ms. Hensey also said that she did not hear anything different about the position description during the job interviews she participated in with Mr. Schierholz. And finally, Ms. Hensey stated that she was not aware of any recent changes made to the Regional Client Manager positions and would have no knowledge of how any shift from exempt duties occurred.<sup>60</sup>

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<sup>60</sup> After Mr. Hensey’s interview, the OEIG obtained emails from the CMS involving correspondence between the CSC and CMS regarding the exempt positions in the BOPM. Starting approximately in June 2016, CSC Executive Director Dan Stralka sent emails requesting to review the exempt structure of the BOPM, including the Regional Client Manager positions. This review and questions from Mr. Stralka regarding BOPM positions continued into May 2017. Ms. Hensey was included on the majority of these emails. In one email, Ms. Hensey wrote to Mr. Stralka, on May 4, 2017, and listed out, in part of the email, the Regional Client Managers and explained the position further by stating:

“Program remains viable and important program within the Bureau of Property Management. Clarifications were made to the positions in October 2016 to address the questioned overlap in Transactions vs. Client Manager positions as well as to incorporate **updated duties**. Director Hoffman also addressed the overlap issue in last week’s meeting.” (emphasis added)

Because CMS had not provided the 2016 position descriptions in response to an OEIG request for documents, the OEIG was unaware, at the time of the interview, of the 2016 updates, as well as, Ms. Hensey’s involvement, and thus did not confront Ms. Hensey with this information during her interview. It is concerning, however, that Ms. Hensey stated she was unaware of any recent changes to the Regional Client Manager position descriptions when emails show that she was involved with working with the CSC to ensure the Regional Client Manager position descriptions were updated in late 2016.

When asked what guidance is given to Bureau staff regarding reviewing position descriptions, updating position descriptions, and ensuring that the duties performed are consistent with those listed in the position descriptions, Ms. Hensey said Bureau Personnel Liaisons receive hands on training, or on the job experience. When asked if Bureau Deputy Directors receive similar guidance or training, Ms. Hensey said that on some level, she “assume[s]” they do, and said that the need to have job duties up to date and consistent with the position descriptions is often discussed in meetings.

Ms. Hensey also said that “we try to stress” a supervisor’s duty to review an employee’s duties by tasking the supervisor with checking a box on an employee’s annual performance evaluation certifying that a review of the person’s job description was done and found to be accurate. Ms. Hensey stated, however, that performance evaluations “tend not to be” the highest priority for management.

## **2. Interview of Former BOPM Personnel Liaison Diane Bevill**

During her OEIG interview, Ms. Bevill was asked whose responsibility it was to identify if a position description does not correspond with the actual duties being performed. Ms. Bevill’s response was that employees “should be doing what the position description says.” When Ms. Bevill was informed that there were seven Regional Client Managers that were not doing duties within their position description that would make their position 4d(3) exempt, Ms. Bevill stated that when employees first start there is a learning curve, and that they may not be able to represent the Deputy Director initially but should be doing the remaining position duties. She also said that it is not surprising that Regional Client Managers were not speaking on behalf of the Deputy Director because he represents the agency at such a high level. When asked who should have been aware that Regional Client Managers were not conducting these exempt duties, Ms. Bevill said that the Deputy Director would need to know but if no one was notifying him, the Deputy Director would assume that things were “status quo.”

## **3. Interview of Former BOPM Deputy Director Terry Schierholz**

In his interview on November 13, 2017, Mr. Schierholz stated again that Facilities Managers and Regional Client Managers were similar positions and had duties that overlapped with each other. Mr. Schierholz said he saw the positions “as one” even though Mr. Schierholz was aware that Facilities Managers were PSAs while Regional Client Managers were double-exempt positions. When asked if he thought there was any problem with this difference and the fact that Regional Client Managers were not doing exempt work, he said he did not know. He also said that he believed the position had the “latitude and longitude” to do the tasks that the Regional Client Managers were in fact doing.

Mr. Schierholz said he did not know how frequently, if at all, position descriptions were evaluated to see if duties listed were being performed by employees. Mr. Schierholz said he “couldn’t answer” when he was asked what qualified a position for 4d(3) exemption status. After Mr. Schierholz was told of the factors considered in making a position exempt, Mr. Schierholz said that he believed the duties the Regional Client Managers were performing did not rise to that

level. According to Mr. Schierholz, he did not believe the Regional Client Managers ever served as principal policy making positions or conducted other duties listed in the position description.

When asked who was responsible for ensuring that employees were actually doing the job duties in their position description, Mr. Schierholz said it was both CMS Personnel's responsibility and the Bureau that employs the person. Mr. Schierholz said that it was his responsibility "to a degree," as well as the supervisors and the Regional Client Managers, themselves, to be aware of discrepancies between the position description and the actual duties being performed. Mr. Schierholz said that it was up to the supervisors of the positions to ensure coverage and tasks were being completed. However, when asked, Mr. Schierholz did not recall ever directing supervisors, such as [Employee 1], [Employee 3], or [Employee 2], to inform him of any discrepancies between an employee's position description and their actual duties.

#### **4. Interview of CMS BOPM Deputy Director Josh Potts**

In his October 4, 2017 interview, Mr. Potts was informed that there was evidence that Regional Client Managers were not doing exempt duties. In response, Mr. Potts said that he had not given the Regional Client Managers a lot of thought, and added that if they were "pitching in," he did not have a problem with it. He said that it would be a problem, if they were doing the duties of Facilities Managers. Mr. Potts said that prior to his interview, no one had brought this to his attention. When asked what his understanding of the qualifications for a 4d(3) position, Mr. Potts stated that they are "at will" employees and added that is the "only thing I know." Mr. Potts said that if he had any questions about a 4d(3) position, he would seek guidance from CMS Personnel. When Mr. Potts was shown factors that the CSC uses to determine an exempt position, and asked whether the Regional Client Managers duties rise to the level warranting an exemption, Mr. Potts responded "probably not."

According to Mr. Potts, he had never been asked to review a position description, nor had he been given any guidance on the issue. He did not recall ever discussing updating position descriptions with Personnel Liaison Brian Collins, but that if he had any questions about duties listed in a position description, he would ask Mr. Collins.

#### **5. Interview of CMS Director Michael Hoffman**

In his OEIG interview on December 8, 2017, Director Hoffman said that he became aware of the issue regarding Regional Client Managers in the last month or two when [Employee 15] told him there were concerns with the duties being performed and the locations of the Regional Client Managers. Director Hoffman said that he was also aware that the OEIG had submitted Requests for Documents (RFD) related to the Regional Client Manager position. Director Hoffman said that after [Employee 15] alerted him to this issue, he spoke to CMS Assistant Director Markus Veile and Mr. Potts, and had them look into this matter. He said since that directive, he learned that the current Regional Client Managers were not doing duties that would justify a 4d(3) exempt status and that they could not justify the existence of the seven Regional Client Manager 4d(3) exempt positions. After recently having meetings about this issue, including consultations with

the Governor's Office,<sup>61</sup> Director Hoffman said he made the decision to abolish the position effective January 1, 2018.<sup>62</sup> Director Hoffman said that the incumbents will be terminated but may apply for other positions within CMS.

Originally, Director Hoffman stated that it is the responsibility of the Deputy Directors of the Bureaus to ensure that the individuals in 4d(3) exempt positions are performing the duties that justify the exempt status by knowing what their employees are doing and reviewing job descriptions at the time of evaluations. Director Hoffman said that Mr. Schierholz should have known about this issue and should have reported it to the Bureau of Personnel and the CMS Director. While Director Hoffman said he was "not very happy" about this issue not being identified earlier, he stated that he did not see this as a failure on the part of Deputy Director Potts but rather a general management failure and that ultimately the responsibility falls on himself. Director Hoffman believed that such a failure arose because of turnover in the BOPM, and the fact that it was a large and "messy" Bureau and that they are working on cleaning it up. He also stated that the problem was the result of "dysfunctional bureaucracy" and a "general failing to identify the issue and prioritize it." And while he said there was no excuse for how long it took to identify this issue, there were many other problems and issues that took priority.

When informed that Deputy Directors of the BOPM and Personnel had each said that identifying this issue was not their responsibility, Director Hoffman said he found that concerning and "speaks to the need to further clarify what everyone's responsibilities are." Director Hoffman said that he has communicated to his Deputy Directors at regular "leadership meetings," as recently as December 5, 2017, the fact that Deputy Directors are responsible for ensuring that their direct report 4d(3) exempt employees are performing the requisite exempt status functions. He did not know, however, how often or when he first gave that direction. Director Hoffman said he does not think this is a problem at CMS but in an effort to make it more of a priority, he plans on developing and implementing a better evaluation system, creating a Compliance and Training unit at CMS, raising the issue more at Leadership meetings, and hiring a senior level person to focus on Bureau of Personnel issues.

## **6. Interview of Governor's Office Manager of Human Resources Office Operations Judith McAnarney**

In her OEIG interview, Ms. McAnarney said that while the Governor's Office was aware of the issues surrounding double-exempt hiring in the recent past, including the creation of the IDOT Staff Assistant positions to circumvent the hiring rules, the Governor's Office has not changed its practices regarding hiring double-exempt employees. According to Ms. McAnarney, the Governor's Office relies heavily on agency Human Resources staff to ensure that employees are performing the duties found in their position descriptions. She also said that while there have

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<sup>61</sup> Director Hoffman said that he received a call from the Governor's Office General Counsel Lise Spacapan regarding the Regional Client Manager position sometime after he was made aware of it by [Employee 15] but that he did not know how the Governor's Office became aware of it.

<sup>62</sup> At the time of his interview, Director Hoffman provided the OEIG with a copy of an email he sent to Mr. Potts on December 4, 2017, stating it had come to his attention that seven Regional Client Manager positions were "unnecessary for the bureau to perform its core functions and mission," and that "the majority of prescribed duties [were] not being performed" by the Regional Client Managers, and thus, the positions are to be eliminated effective January 1, 2018.

been discussions about the process of recommending candidates or interacting with the agencies filling the 4d(3) exempt positions, there have been no formal conversations about making changes to that process.

After being informed by the OEIG that the seven Regional Client Managers were not doing the duties within their position descriptions to justify the 4d(3) exempt status, Ms. McAnarney said that she was not aware of this. Ms. McAnarney added that she knows this was a reason the Special Master was asking agencies to complete reviews of the 4d(3) exempt positions, to ensure that people were doing the duties of the positions.

Ms. McAnarney said that when she initially provided CMS with recommended candidates for the Regional Client Manager positions, she was not aware that they would not be doing the duties contained within the position description, nor did she know that they would not be reporting directly to the BOPM Deputy Director. According to Ms. McAnarney, it is the agency's responsibility to correct such issues and update the position descriptions. Ms. McAnarney said that she only receives the position description from agencies and there is no way for her to know that incumbents are not doing the duties of the position descriptions unless the agency informs her of this.

#### **L. CMS's Role in Providing 4d(3) Exempt Lists Pursuant to the *Shakman* Lawsuit**

On November 28, 2016, the court in the *Shakman* lawsuit expanded the authority of the Special Master to review *all* positions under the jurisdiction of the Governor that were identified as *Rutan*-exempt.<sup>63</sup> In a subsequent Agreed Order, the Governor's Office was required to provide the Special Master by May 31, 2017, a list of all exempt positions including 4d(3) exempt positions (Exempt List).<sup>64</sup> In subsequent court appearances, the due date for this Exempt List to be provided to the Special Master was extended. As of the date of this report, a list of CMS 4d(3) exempt employees had yet to be provided to the Special Master.

##### **1. Interview of CMS Bureau of Personnel Deputy Director Deborah Hensey**

During her September 26, 2017 OEIG interview, Ms. Hensey stated that the Special Master requested that CMS conduct a review of all 4d(3) exempt positions in order to ensure the position duties are accurate and appropriately rise to the level of a 4d(3) classification, and that by virtue of its 4d(3) exempt status, the Regional Client Manager positions would be part of that review. Ms. Hensey said that the ultimate goal is for all positions to be either Personnel Code-covered or at will employment positions. Ms. Hensey stated that there have been discussions regarding CMS conducting an internal review to determine which positions should be code-covered, or at will.

Ms. Hensey was asked if CMS Personnel had ever reviewed and compared the position description with the actual duties of the Regional Client Managers. According to Ms. Hensey,

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<sup>63</sup> Memorandum Opinion and Order at 2, *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. November 28, 2016).

<sup>64</sup> Agreed Order at 2, *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. May 1, 2017).

CMS Personnel had not audited the duties of the Regional Client Manager. She stated that there had been general discussions about auditing positions to ensure that the duties were consistent with the position description but that had not happened due, in part, to lack of manpower.

Ms. Hensey was also asked if she could recall any instances in which 4d(3) exempt positions had their exemption status rescinded. Ms. Hensey said that rescinding the exemption status of 4d(3) exempt positions “doesn’t happen a lot.” Ms. Hensey said that she could recall instances in which some BOPM 4d(3) exempt positions were rescinded due to vacancies, duties being absorbed, and positions being no longer needed but she could not recall any instances in which a 4d(3) exempt position was rescinded due to a change in an incumbent’s job duties or requirements.

## **2. Interview of CMS *Rutan* Compliance and Administration Supervisor Denise Connelly**

In her OEIG interview on November 30, 2017, Ms. Connelly stated that in 2014, she became aware of the ongoing *Shakman* lawsuit and that in January of 2017, she became “much more involved” and attended meetings with the Special Master and her staff, as well as the OEIG Director of Hiring and Employment Monitoring. Ms. Connelly said that she has been providing information, documents, and lists to the Special Master and was tasked with providing a list to the Special Master of all 3,600 *Rutan*-exempt positions, which included 4d(3) exempt positions.

According to Ms. Connelly, approximately two months ago, the Special Master requested that all agencies conduct a review of their own exempt positions in order to ensure that the position duties rise to the specifications of the classification, and that the duties are accurate and appropriate for an exempted status. Ms. Connelly said she was given a Verification Checklist for Exempt Positions Form (Verification Checklist) to be completed by the agencies that reviewed the position description to verify that the position description accurately describes the duties being performed. Ms. Connelly said that she provided this information to agencies, including CMS, about two months ago. Ms. Connelly stated that Ms. Pineda was tasked with compiling the review for CMS positions. According to Ms. Connelly, she has not received or seen any Verification Checklists completed for any 4d(3) exempt positions at CMS to date. Ms. Connelly said that Ms. Pineda informed her that some of the CMS reviews were completed, but that Ms. Pineda was waiting on others to be submitted. Ms. Connelly said that she did not recall Ms. Pineda raising any concerns regarding incumbents in CMS positions who were not doing their assigned exempt duties.

According to Ms. Connelly, the first time she was made aware of such an issue, was approximately two weeks before her OEIG interview when she was called into a meeting with CMS Assistant Director Markus Veile. Ms. Connelly said that Mr. Veile asked her generally what she would recommend if there were incumbents in positions who were not doing the duties of their position descriptions but she was not told that it was regarding a CMS position.

Ms. Connelly said that within the week, or a few days later, but prior to Thanksgiving 2017, she was called into a second meeting with CMS and Governor’s Office staff including Mr. Veile, Ms. Pineda, Deputy Director of Personnel John Terranova, Mr. Potts, Governor’s Office Special Counsel Joseph Hartzler, Governor’s Office Deputy General Counsel Jill Hutchison, and maybe

CMS General Counsel Ryan Green. Ms. Connelly said that at this meeting, she first learned there were individuals in the Regional Client Manager position who were not doing the duties reflected in their position descriptions. According to Ms. Connelly, in the meeting, Mr. Potts was asked about the position. Ms. Connelly said that Mr. Potts “seemed generally familiar” with the position and admitted that the Regional Client Managers did not “necessarily report to him.”

Ms. Connelly said that the following day, she participated in another meeting with the same attendees as the day before, and said that Governor’s Office General Counsel Lise Spacapan and CMS Director Michael Hoffman were also present for the meeting. Ms. Connelly said that Director Hoffman discussed terminating the Regional Client Manager positions. Ms. Connelly said that she was sure there were additional meetings regarding this issue, but said that she was not involved in those conversations.

When asked if Mr. Potts had completed the Verification Checklist for positions in the BOPM, Ms. Connelly said that investigators would need to seek that information from Ms. Pineda. Ms. Connelly said that she has not received any Verification Checklists from Ms. Pineda. Ms. Connelly was asked when the Exempt Lists were due to the Special Master. According to Ms. Connelly, she was not aware of any representations made to the Special Master with regard to when the reviews would be completed.

Ms. Connelly was also asked if there was a concern that personnel staff, the employee, or the supervisors of the employees are just “checking the boxes” on the Verification Checklists indicating that the duties are reflective of the Position Description. Ms. Connelly replied, “Always.”

### **3. Interview of CMS Director Michael Hoffman**

In his interview on December 8, 2017, Director Hoffman stated that Denise Connelly is in charge of compiling the list of exempt positions for the Special Master. Director Hoffman believed that for CMS, the Deputy Directors and Bureau of Personnel staff were helping to put that list together for Ms. Connelly. Director Hoffman was not familiar with a Verification Checklist form, and did not know what guidance was given to the Bureaus regarding the completion of the Exempt List or review of exempt positions. He did not know if there was a previous date that CMS’s list was due to the Special Master but said that the goal is to have the CMS list to the Special Master by the end of December 2017. Since learning of this issue with Regional Client Manager positions in the last month, Director Hoffman said he asked Ms. Pineda if the Regional Client Manager issue had been flagged as part of the review for the Special Master, and he was told “yes.”

#### **M. CMS’s Second Instance of Providing a Limited Response to an OEIG Requests for Documents**

During this investigation, the OEIG encountered a second instance of CMS not providing relevant documents in response to an OEIG request. As of July 2017, the Special Master was working closely with CMS to help compile the Exempt List and verify that the position

descriptions were accurate.<sup>65</sup> Ms. Connelly was designated as the person at CMS in charge of compiling the Exempt List. On November 2, 2017, prior to the OEIG interviewing Ms. Connelly, the OEIG submitted a request for documents (RFD) to CMS Senior Counsel and Ethics Officer Robert Osgood, in part, for:

- Copies of any internal review CMS has conducted of the 4d(3) exempt SPSA / Regional Client Manager positions pursuant to a Special Master request that agencies review and verify positions are properly exempt, including any findings of the review.

As described below, the response provided on November 16, 2017, by Mr. Osgood did not contain relevant CMS documents. Mr. Osgood provided the OEIG with a spreadsheet listing the seven incumbent Regional Client Managers by name, title description, position number, and working title. A column in the spreadsheet also indicated that the position descriptions were “current.” No other documentation was provided regarding this particular request.

During her OEIG interview, Ms. Connelly was shown the spreadsheet. According to Ms. Connelly, she had not seen this spreadsheet but said it looked like part of the spreadsheet she had generated for all exempt positions at CMS, except for columns that were missing. Ms. Connelly also informed the OEIG that Ms. Pineda had been tasked with doing reviews of the CMS exempt positions and obtaining the Verification Checklist forms for those positions.

Subsequent to Ms. Connelly’s interview, the OEIG submitted another RFD to Ms. Pineda, not Mr. Osgood, for, in part:

- Copies of any and all Verification Checklists for Exempt Positions completed for positions within the CMS Bureau of Property Management, including the positions for Regional Client Manager.

In response, on December 12, 2017, Ms. Pineda provided the OEIG with numerous documents including a spreadsheet that appears to be the list of all exempt positions that includes all of the columns that Ms. Connelly referenced in her interview. This spreadsheet was not provided in response to the first RFD sent by Mr. Osgood. In addition, Ms. Pineda provided Verification Checklists forms for the Regional Client Manager positions, signed and dated December 12, 2017.

The OEIG then requested, on December 13, 2017, from Brian Collins, the Personnel Liaison for the BOPM, any Verification Checklist forms that had been completed for the Regional Client Manager positions prior to December 12, 2017. Mr. Collins provided the OEIG with the Verification Checklist forms for all seven Regional Client Managers dated on November 3, 2017, signed by Mr. Collins. For each Regional Client Manager position, there is a check indicating that “I reviewed the applicable organization chart and verified that the organization chart and Position Description both reflect the position’s reporting structure accurately.” In addition, each form has

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<sup>65</sup> Initial Report Regarding Statewide Identification of *Rutan-Exempt* Titles at 9, *Shakman, et al. v. Democratic Organization of Cook County, et al.*, No. 69 C 2145 (N.D. Ill. July 31, 2017).

a handwritten note at the bottom stating in quotes that “[t]he position description is not accurate and will be clarified to reflect accurate duties.”

Both the spreadsheet, and the seven Verification Checklist forms dated November 3, 2017, were not provided to the OEIG in its first request for “internal review of the Regional Client Manager position pursuant to the Special Master request.”<sup>66</sup> Mr. Osgood only provided the one spreadsheet in his response on November 16, 2017, even though the November 3, 2017 Verification Checklist forms existed and clearly were part of an internal review of the position. This is the second instance in this investigation of CMS not providing documents responsive to an OEIG request.<sup>67</sup>

#### IV. ANALYSIS

The OEIG has jurisdiction to investigate, in part, allegations of “mismanagement, misconduct, nonfeasance, misfeasance, [and] malfeasance,” and violations of other related laws and rules.<sup>68</sup> In this case, multiple layers of mismanagement at CMS, and nonfeasance on the part of the Governor’s Office, caused the Regional Client Manager positions at CMS to be filled with employees who were not performing exempt duties necessary to justify its 4d(3) exempt status.

##### A. CMS Regional Client Managers Were Not Performing Duties Necessary To Justify a 4d(3) Exempt Status

Since Governor Rauner’s administration took over in 2015, seven individuals were hired into the 4d(3) exempt position of Regional Client Manager in the Bureau of Property Management as CMS Regional Client Managers. These “at will” hires were initiated, filled, and/or approved by Governor’s Office staff, and did not require any competitive selection process.

The Regional Client Manager position was originally created, reviewed by CMS Personnel, and submitted to and approved by the CSC for 4d(3) exempt status, in 2004. In making its determination as to a *Rutan*-exempt status, CMS generally considers the position’s authority to: develop and implement agency policies; access confidential agency information; and speak on behalf of the agency or bind the agency to a course of action. CMS also examines the location of the position within the organizational hierarchy of the agency and whether the position reports to a *Rutan*-covered or *Rutan*-exempt supervisor.

Upon written recommendation from the CMS Director, the CSC conducts an independent review in order to determine whether a position qualifies for 4d(3) status because it “involve[s] either principal administrative responsibility for the determination of policy or principal

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<sup>66</sup> The November 3, 2017, Verification Checklist forms were also not provided in Ms. Pineda’s response to the OEIG’s RFD. The OEIG had to make a further request in order to obtain or determine whether other versions besides the December 12, 2017 forms existed.

<sup>67</sup> While this conduct could amount to a failure to cooperate with an OEIG investigation pursuant to the Ethics Act, 5 ILCS 430/20-70, rather than expend the investigative resources and delay the issuance of this report, the OEIG did not conduct further interviews regarding these RFD responses. The OEIG, however, strongly recommends that CMS look at these particular RFD responses and review CMS’s obligations for responding to OEIG RFDs with appropriate staff.

<sup>68</sup> 5 ILCS 430/20-10(c).

administrative responsibility for the way in which policies are carried out[.]”<sup>69</sup> Pursuant to 80 Ill. Admin. Code § 1.142(a), the CSC looks at the following factors in making its determination of a 4d(3) exemption:

- the amount and scope of the position’s principal authorities to make and administer policy;
- its independent authority to represent the agency to those outside of the agency;
- its capability to bind the agency to a course of action;
- the nature of the program for which the position has principal policy responsibility;
- the placement of the position within the agency’s organization; and
- the mission, size and geographical scope of the agency program in which the position is located.<sup>70</sup>

While there are many duties listed in the Regional Client Manager position descriptions, and some of these have changed throughout the years, there are a number of listed duties that have remained the same from the positions’ inception until the latest position description in 2016, that set forth the Regional Client Managers’ authority, and justify its 4d(3) exempt status. Such examples include the significant policymaking role, the ability to bind the agency or act as an agency spokesperson, the role of overseeing the Bureau’s budget, and the significant independent authority. These duties are detailed in the list below and remained in the 2016 updated position description:

- works with the Deputy Director of Property Management on formulating policy and works with agency Directors to administer all property management operations for the agencies in their regions;
- develops and revises Statewide facility management policies related to operating objectives for both leased and State-owned facilities;
- directs planning and programming for agency-wide activities mandated by Executive Order 10, which consolidated facilities management within CMS;
- oversees the BOPM budget and develops cost reduction strategies for the Bureau under the guidance of the BOPM Chief Financial Officer and Deputy Director;
- serves as official agency spokesperson on behalf of the BOPM Deputy Director to other agencies, the public, vendors, and federal government officials, regarding the development of property management initiatives and the resolution of property management issues;
- possesses substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors; and
- independently manages contract administration on an ongoing basis.

In addition, the position descriptions and the organizational charts have always listed the Regional Client Manager as directly reporting to the Deputy Director of the BOPM, another factor supporting the basis for its 4d(3) exempt status. Based on the evidence gathered in this case,

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<sup>69</sup> 20 ILCS 415/4d(3).

<sup>70</sup> The OEIG recognizes that while the exempt determination reviews conducted by CMS and the CSC are independent, substantive factors considered by each materially overlap.

including interviews of BOPM staff and reviews of relevant documents regarding the Regional Client Manager position, the Regional Client Managers were not performing these exempt duties, nor were they reporting directly to the Deputy Director.

According to Terry Schierholz, who had been in the role of Deputy Director of the BOPM for approximately five or six years, the Regional Client Managers were never considered principal policy makers nor were they conducting policymaking-related duties. None of the Regional Client Managers ever reported to Mr. Schierholz. Mr. Schierholz denied that the Regional Client Managers conducted the 4d(3)-related duties in the position description except to say that some of the Regional Client Managers may have had input or assisted on issues but that was done through the Regional Client Manager's "supervisor," who was not the Deputy Director. Mr. Schierholz described Regional Client Managers as having similar duties as *Rutan*-covered Facilities Managers, including oversight of facility issues, the health and safety of the facilities, ADA issues, landlord issues, or complaints received. He explained that both positions also addressed building issues related to heating, cooling, windows, and doors that would then be reported to their supervisors who were Facilities Managers.

Deputy Director Josh Potts, who took over the position in April 2017, had little awareness of the Regional Client Managers' duties, but said that generally, the Regional Client Managers visit facilities to "check up on things" and make sure that "everything is ok." Mr. Potts stated that the Regional Client Managers did not directly report to him. [Employee 3], who said he supervised Regional Client Manager Ross Breckenridge, stated that "on paper" the Facilities Manager and the Regional Client Manager positions are different but in "actuality" the duties are similar.

Based on the interviews of the Regional Client Managers themselves, the duties they performed varied somewhat but included the following work:

- setting up tables and chairs for special events;
- reporting the condition of conference rooms to the supervisor;
- monitoring inventory and ordering supplies for their assigned buildings;
- working with the maintenance work order system for the building;
- monitoring the switch from day shift to night shift of the janitorial staff;
- working with staff during fire drills, remodels, and agency movements;
- conducting facility inspections of State leased buildings across the State;
- serving as the BOPM point of contact with Allied Universal Security (AUS) (a contractor that provides security services for the State) by passing on issues with security guards to AUS when they arise;
- conducting *Rutan* interviews;
- working on procurement Requests for Proposals (RFP) for things needed for the move out and sale of the Thompson Center;
- finding space for agencies and planning floor designs, by working with agency representatives to determine what space is needed;
- completing ADA inspections of State-leased buildings;
- assisting with facility management duties;
- forwarding RFEs to accounting for approval;

- monitoring the order and execution of commodity calls, contracts, and procurement processes; and
- communicating with vendors about procurement orders and delivery timelines.

None of these reported duties rise to the level to justify a 4d(3) exempt status based on CMS's criteria or the CSC's criteria delineated in the Administrative Code. Each of the Regional Client Managers denied doing a significant number of duties listed in their position descriptions, many of which were necessary to justify a 4d(3) exemption.

While some Regional Client Managers tried to say that they acted as a spokesperson for the BOPM Deputy Director or conducted other exempt duties, none of them could provide examples that showed they in fact acted in such a capacity to a level that would justify an exempt position. Examples given by the Regional Client Managers to explain how their work fit a particular duty listed in the position description, fell far short of establishing that they had a position of authority such that it would amount to a 4d(3) exemption. For instance, Mr. Walsh claimed that he "possesse[d] substantial independent authority on issues of the greatest magnitude or volatility in the commitment of resources and reallocation of resources to enhance efficiency and services provided on behalf of the BOPM, with deference to the BOPM Deputy Director and agency Directors" by emailing his supervisor about issues that he finds, such as broken lights he discovers when he is setting up tables and chairs in conference rooms, so that a work order can be put in to fix the issue. Mr. Jones claimed that he "independently reallocate[d] resources to maintain optimal operational efficiency" for the Bilandic Building, by assisting the maintenance staff with the annual inventory of office furniture. Mr. Stevenson claimed that he "serve[d] as official agency spokesperson on behalf of the BOPM Deputy Director" by showing janitorial service companies what services would be expected if they won a contract to perform services while on walkthroughs of leased buildings. Mr. Danna claimed that he "independently reallocate[d] resources to maintain optimal operational efficiency," by, for example, ensuring that fire extinguisher inspections are up to date. Mr. Breckenridge claimed that he "possesse[d] substantial independent authority on issues of the greatest magnitude ...," because he passes information about his building inspections on to his supervisor. And Ms. Zaworski claimed that she "work[ed] with the Deputy Director of Property Management on policy formulating, planning, directing, implementing ..." by using a new policy related to the Inter-governmental Purchasing System (IGPS) created and promulgated by [Employee 1] when she works on ordering things.

These duties described by the Deputy Directors, and the Regional Client Managers themselves, do not rise to the level of 4d(3) exempt work. As noted by Mr. Schierholz and [Employee 3], and evidenced in the position descriptions, the Regional Client Managers' work was more akin to those duties described of *Rutan*-covered Facilities Managers. While it appears that there was little difference in the work being performed by Facilities Managers and Regional Client Managers, there is a significant difference in their classification. Facilities Managers are classified as *Rutan*-covered PSA positions that should be competitively filled, while the Regional Client Manager position was a 4d(3) exempt position that allows the hiring authority to base its employment decision on party affiliation.

In addition, the evaluations of the Regional Client Managers show that the Regional Client Managers were not performing exempt work. Neither the listed objectives nor the comments

describing that particular employee's work, describe the Regional Client Manager as a policymaker or policy implementer, an overseer of any budgets, an official spokesperson, or a "possessor of independent authority on issues of the greatest magnitude."

It is also clear that the Regional Client Managers were not reporting to the Deputy Director of the BOPM. Both Mr. Schierholz and Mr. Potts said that the Regional Client Managers did not report directly to them. In addition, none of the Regional Client Managers identified the Deputy Director of the BOPM as their direct supervisor. The supervisor names provided by the Regional Client Managers matched the supervisor's signature on the respective Regional Client Manager evaluation forms. Not only were the Regional Client Managers not reporting directly to the Deputy Director, but according to Ms. Hensey, it was not appropriate for several of the Regional Client Managers to be reporting to the identified supervisors based on the supervisors' and the Regional Client Managers' classifications.

And finally, in light of the OEIG's investigation, when this issue finally came to CMS Director Hoffman's attention, Director Hoffman's assessment was that the Regional Client Managers were not doing duties that justify a 4d(3) exempt status, and that CMS could not justify the need of these Regional Client Manager positions as 4d(3) exempt.

For all of these reasons, it is clear that the Regional Client Managers were not performing exempt work as set forth in the position description for a number of years, at least as far back as when Mr. Schierholz began acting as the Deputy Director. Thus, the allegation that CMS employed Regional Client Managers who were not performing the duties necessary to justify a 4d(3) exempt status is **FOUNDED**.<sup>71</sup>

#### **B. CMS Employees Failed to Ensure that CMS Regional Client Managers Were Doing Exempt Work**

CMS is the State agency responsible for administering the Illinois Personnel Code. CMS Bureau of Personnel reviews documentation involving hiring, employment and classification of positions. It is also the agency that provides other State agencies with instruction as to personnel matters. Considering CMS's responsibility to administer the Personnel Code, it is a bit "shocking," to use the Deputy Director of the Bureau of Personnel's own words, to learn that certain CMS employees were not doing work that justified an exempt classification. Specifically, the Regional Client Manager employees were not doing exempt work to justify the 4d(3) exempt status. More "shocking," however, is the fact that for years no one at CMS identified this issue, brought it to anyone's attention, or took any action to fix the problem.

#### **Indicators of a Problem**

While it is always clearer in hindsight, there were many indications, some more obvious than others, that the Regional Client Managers were not doing work that would justify a 4d(3)

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<sup>71</sup> The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

exempt position. Former Deputy Director Schierholz knew for years that the Regional Client Managers did not report to him directly. According to Mr. Schierholz, he did not believe the Regional Client Managers were *ever* doing some of the duties listed in the position description, including serving as principal policy makers. Although Mr. Schierholz said he was unaware of what qualified a position for 4d(3) exempt status, he was certainly aware that the duties of the Regional Client Managers overlapped with the *Rutan*-covered Facilities Manager, so much so that he considered them “as one.” These facts should have raised an issue regarding the Regional Client Managers’ classification status.

Current Deputy Director Potts, who has been in the position since April 2017, was extremely unaware of the duties of the Regional Client Manager, as well as the factors justifying a 4d(3) exempt position. In October 2017, when he was interviewed by the OEIG, Mr. Potts was still unfamiliar with what seven of his direct reports did, and had not even met five of them. While Mr. Potts was relatively new and it can take a while to get up to speed, it does not take much to notice that the seven Regional Client Managers who were supposed to directly report to him, were not in fact doing so.

The organizational chart for the BOPM should have raised some red flags with regard to the Regional Client Manager positions. The organizational chart lists seven Regional Client Managers directly reporting to the Deputy Director. These seven exempt positions, however, listed no subordinates, unlike most of the other direct reports to the Deputy Director.

The duties of the Regional Client Managers were very similar to those of the *Rutan*-exempt Facilities Managers. Both Mr. Schierholz and [Employee 3] believed they had overlapping duties. Five out of the seven Regional Client Managers told the OEIG that they reported to various other Facilities Managers, some of which were not exempt positions.

When the Regional Client Manager positions were being filled again in 2015 and early 2016, Ms. Hensey sat in on four of the interviews. For each of the interviews she attended, Mr. Schierholz stated that he discussed current and future duties to include: performing facility management duties, conducting inspections of facilities, taking care of issues at facilities, and doing architectural drawings for space requests. These duties, on their face, raise questions as to whether this should be an exempt position. Ms. Hensey, however, asserted that her only role in the interview process was to ask personnel-related questions. Considering her role as the Director of Bureau of Personnel, her knowledge of personnel rules, and her awareness of *Shakman* lawsuit issues, the fact that this would not raise questions in Ms. Hensey’s mind about the classification of this position, is concerning.

The evaluations are another example of how problems with this position were overlooked. The evaluation forms used by CMS have a box for supervisors to check to confirm that the duties performed by the supervisee follow the duties in the position description. Clearly, no one was properly doing this part of the evaluation for the Regional Client Managers because all the evaluation forms were marked “yes” indicating that there was not a discrepancy between the two.

The BOPM specifically has a Personnel Liaison assigned to handle the personnel needs of that Bureau. Diane Bevill was in the Personnel Liaison position for years until her retirement in

2016. After Ms. Bevill left, the position was filled by Brian Collins. During Ms. Bevill's tenure, she was involved with making changes to, and updating, the position descriptions for the Regional Client Managers. While some of these clarifications to the position description involved a change of location, many involved changes in duties as set forth in Section III B and C of this report.<sup>72</sup> However, it appears that in the process of making all of these changes to the position description, no one noticed that actual duties or reporting structure did not match up with the duties, or reporting structure, in the position descriptions.

All of the Regional Client Manager position descriptions were adjusted in 2016, after CSC Executive Director Dan Stralka raised an issue with the Regional Client Manager position description appearing to have overlapping duties with a Transaction Manager position. A number of emails were exchanged regarding this issue between Bureau of Personnel staff and Mr. Stralka that included Director Hoffman in the exchange. Deputy Director of Personnel Hensey went so far as to email Mr. Stralka on May 4, 2017, informing him that the clarifications made in October 2016, to the Regional Client Manager position descriptions "incorporate[d] updated duties." Even with many people looking at the position descriptions in 2016, at no point were the exempt duties questioned, or seemingly even identified as troubling. It is possible that the issue was noticed, and not reported. However, either the failure to identify this as an issue, or the failure to remedy it, are problematic.

More recently, CMS was tasked with providing to the Special Master a list of exempt positions for all State agencies under the jurisdiction of the Governor. As part of this process, CMS is reviewing its own exempt positions. According to Ms. Connelly, as part of this review Verification Checklists must be filled out by the agency to verify that the position description accurately describes the duties being performed. Even with this process taking place, Ms. Connelly, who was in charge of compiling the Exempt List, said she was not aware of any problem with the Regional Client Managers until mid-November after attending a meeting with CMS and Governor's Office staff. Considering the current scrutiny of exempt positions within the State of Illinois, it is confounding that CMS, the gatekeeper of the Personnel Code, would not either know of, or raise, this problem that was taking place with its own employees.

Even considering all the indications and times appropriate for inquiry into these 4d(3) exempt positions, seemingly no one at CMS identified or raised this issue. For years, no one said anything or questioned the existence of this position. Based on the interviews conducted, and the fact that everyone appeared to believe it was not their responsibility, it is clear that, but for the OEIG's investigation, this issue would never have surfaced at CMS.

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<sup>72</sup> There were two changes to the Regional Client Manager 5 position that the CSC did not have in its records, and was the basis for the self-initiation of this case. The first modification was a work location change from Sangamon County to Cook County effective June 1, 2008. The second was a work location change from Sangamon County to St. Clair County effective June 16, 2015. Although the CSC did not have any record of receiving either of these changes to the Regional Client Manager 5 position, the OEIG did not determine whether those records were ever sent by CMS and for that reason the allegation, at this time, is UNFOUNDED.

### **CMS Management's Responsibility**

Every relevant CMS employee that the OEIG interviewed<sup>73</sup> asserted that they were unaware that the Regional Client Managers were a problem, and many suggested that it was somebody else's responsibility to ensure that employees were doing the exempt work listed in the position description. This raises the question of whether employees were not doing their job properly, not instructed properly or informed of their role, or alternatively, were willfully ignoring the obvious. It is the OEIG's opinion that there were many employees at CMS that knew, or should have known, that the Regional Client Managers were not doing exempt duties necessary to justify the 4d(3) exempt status, including the Regional Client Managers themselves, numerous supervisors, and numerous personnel staff. The OEIG, however, will leave it to CMS to determine how to handle those employees' failure to identify, report, and remedy the issue.

What is clear from the evidence gathered in this investigation is the fact that there was virtually no guidance from management regarding the need to identify or reveal such an issue. Whether there has been a purposeful ignorance with regard to 4d(3) exempt positions in order to avoid losing the ability to hire these "at will" employees, free of any competitive process restraints, or simply a failure to prioritize this issue, the fact remains that CMS has been mismanaged with regard to this issue. Either Director Hoffman was not providing meaningful guidance, or if he was, no one was listening to him, both of which are problematic. The Deputy Director of Personnel also not providing appropriate guidance, training, or instruction to the other divisions on how to ensure that this does not happen. While the Deputy Directors of the BOPM (and most likely other Bureaus) claimed they did not know what factors justified a 4d(3) position, they should have known what their subordinates were doing, and whether those duties matched their position description. This total lack of acknowledgement, instruction, or guidance by upper level managers amounts to serious mismanagement. The idea of "at will" employees not performing exempt work is not a novel issue. But without any direction or management regarding this issue, it will continue to prevail as it has for years with regard to the Regional Client Manager position.

The OEIG agrees with Director Hoffman's assessment provided in his OEIG interview – this problem was the result of "management failure" and ultimately, the overall responsibility falls on the Director. This management failure, as further explained below, is the reason the OEIG has made findings against the Deputy Directors of the BOPM, the Deputy Director of Personnel, and the Director of CMS.

### **The Deputy Directors of the BOPM**

Mr. Schierholz was the Deputy Director of the BOPM for five or six years when there were seven Regional Client Manager positions. During this time, Mr. Schierholz was generally aware of what work the Regional Client Managers were doing, but clearly did not know the role of 4d(3) exempt positions, nor did he direct his staff to recognize the proper role. Mr. Schierholz said it was his responsibility "to a degree," as well as, the responsibility of the direct supervisors to know if employees were doing the duties of the position description. Mr. Schierholz, however,

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<sup>73</sup> While the OEIG appreciates that there are many other CMS and Governor's Office employees that would likely have relevant information or knowledge regarding the issues in this investigation, the OEIG determined that the importance of finalizing this investigation and remedying the current problems outweighed obtaining those further interviews.

acknowledged that he never directed the Regional Client Managers' supervisors to inform him of any discrepancies. Mr. Schierholz admitted that he did not review the performance evaluations of the Regional Client Managers. Mr. Schierholz was also unaware of what qualifies a position for 4d(3) exempt status. It is clear that Mr. Schierholz either did not have the requisite knowledge, or chose to ignore the situation. Regardless, the lack of his own identification and lack of direction to his subordinates to ensure recognition of any issues with exempt job duties amounted to mismanagement.

In his interview, Director Hoffman said that it was the responsibility of the Deputy Directors of a particular Bureau to identify whether employees were doing exempt duties to justify a 4d(3) exempt position. Director Hoffman, however, was quick to add that he did not see the failure to identify this issue, as a failure on the part of Mr. Potts. The OEIG disagrees. While the BOPM is a very large Bureau, only 18 employees reported directly to Mr. Potts, according to the organizational chart. When he was interviewed by the OEIG, Mr. Potts said that he was aware that he had approximately 17 or 18 direct reports. A glance at the organizational chart of his division, shows that seven of his 18 direct reports were Regional Client Managers. It is hard to imagine, in the six months that he was Deputy Director, he did not review the organizational chart of his Bureau. Mr. Potts may not have known the job duties of all the BOPM employees, but he should have been familiar with, or even met, seven employees who directly reported to him, and if he not, then he should have been aware that something was amiss and required inquiry.

Both Mr. Schierholz and Mr. Potts agreed with the OEIG that the employees in these Regional Client Manager positions were not doing the work in their position descriptions that justified a 4d(3) exempt status, and yet nobody was willing to take responsibility for how this issue was overlooked. While the Bureau of Personnel needs to work with the Bureau Deputy Directors to ensure such a situation does not occur, the BOPM Deputy Directors simply relied on others to do a job without recognizing or making anyone aware that exempt duties within a 4d(3) exempt position description were not being performed.

### **The Deputy Director of Personnel**

Deputy Director of Personnel Hensey said she believed that it was the Bureau employees who were responsible for identifying this issue, and that her personnel unit did not have "police powers" necessary to determine if employees are conducting the duties in their position description. It does not, however, take "police powers" to recognize the problem that existed for years with the Regional Client Manager positions; rather, it takes training, instruction, and a willingness of personnel employees to look a bit beyond what is simply written in the paperwork. Furthermore, it is imperative that the Bureau of Personnel, the Bureau that clearly has the most knowledge of personnel matters, properly assist other employees in understanding the nature and importance of the personnel rules. It is likely that Bureau staff are not going to know how to identify such problems unless they are instructed, trained, or given information to understand personnel requirements.

Initially, in her interview, Ms. Hensey said that she directs Bureau Deputy Directors to notify her if an individual does not fit a position or is unable to do the duties listed in a position description. Later, after learning about the Regional Client Manager issue from the OEIG, Ms.

Hensey was asked what guidance was given to Bureau staff to ensure appropriate job duties are being performed. Ms. Hensey stated that the Bureau Personnel Liaisons receive hands on training and she said she “assume[s]” the Bureau Deputy Directors received similar guidance. Ms. Bevill, Mr. Schierholz, and Mr. Potts, however, appeared to be unaware that it was their responsibility to ensure employees were doing the exempt duties listed in their position description. Furthermore, neither Mr. Potts nor Mr. Schierholz was even aware of what type of criteria determines a 4d(3) exempt position. If they did receive training or instruction on this issue, it does not appear to have been effective.

Ms. Hensey also stated that updating position descriptions is often discussed in meetings. Director Hoffman also asserted that he has raised the issue of ensuring position descriptions accurately described duties in Leadership meetings, although he could not remember when this direction was first given except to say that it was discussed recently. It is hard to believe, however, that such direction was being given, at least prior to the OEIG’s investigation coming to light, based on the lack of knowledge of the Deputy Directors interviewed. Both Mr. Schierholz and Mr. Potts asserted ignorance of this issue, and clearly the BOPM Personnel Liaisons were unaware that they needed to recognize this issue.

In order to avoid problems such as the Regional Client Manager positions, the Bureau of Personnel must provide effective guidance in this area. It is also important for the Bureau of Personnel who has the requisite knowledge to inquire into situations a bit more than simply ensuring the paperwork lines up. The failure to do either caused, in part, this problem to persist.

### *Director of CMS*

As the head of CMS, Director Hoffman is ultimately responsible for the proper operation of his agency. In this case, employees at every level failed to recognize or flag this issue. Such a widespread failure leads to the conclusion that there was not proper direction being provided from the top. While the OEIG appreciates Director Hoffman’s decision to abolish this position and his ideas for addressing this issue in the future, this “clean-up” took place only in response to the OEIG’s investigation.

According to Director Hoffman, there was a general failing at CMS to identify and prioritize this issue and CMS “had a lot of other stuff going on.” As mentioned, State employees not conducting exempt duties is not a new or insignificant issue for the State. It should not take multiple OEIG investigations, in order for this issue to be addressed. Certainly having a federal court assign a Special Master to review exempt positions for all State agencies under the jurisdiction of the Governor, should be enough to move this issue up the list of priorities. The expansion of the Special Master’s duties, however, took place a year ago. It is far past time for CMS and the Governor’s Office to prioritize this issue and ensure this management failure does not continue.

For all of these reasons, the OEIG makes a mismanagement finding against former Deputy Director Schierholz, Deputy Director Potts, Deputy Director Hensey, and Director Hoffman.

**C. Governor's Office Failed to Ensure the Regional Client Managers It Hired Were Actually Performing Exempt Work**

The Governor's Office approves all 4d(3) exempt hires and the salaries for those hires. While recommendations can come from many sources, all 4d(3) exempt hires are processed through the Governor's Office, particularly through Ms. McAnarney. The Governor's Office either places its desired candidates into these positions or has to approve anyone being hired into 4d(3) exempt positions. As Ms. McAnarney stated, it is her job to fill these 4d(3) exempt positions.

The Regional Client Managers discussed in this case were all hired during the current administration's tenure. Because these positions were 4d(3) exempt, they could be filled based on political affiliation, as long as the candidate met the minimum qualifications for the position. Per the position description, Regional Client Manager candidates were required to have, at a minimum: (1) a four year college degree and (2) at least four years of "progressively responsible administrative experience." Each of the Regional Client Managers reviewed in this investigation, arguably, possessed these two requirements. Because it was appropriate for political affiliation to be considered in these hires, and the candidates met the minimum qualifications, the OEIG did not spend further investigative resources determining the reasons for, or sources of, Regional Client Manager recommendations.

While the OEIG did not find evidence that Governor's Office staff placed individuals into exempt positions knowing they would not be doing exempt work, the OEIG's investigation revealed that the Governor's Office, like CMS, did not prioritize this issue and believed it was someone else's responsibility. Since November 2016, as part of the *Shakman* lawsuit, the Governor's Office has been directed by the Court to develop, and has been working on, a plan, in consultation with the plaintiffs and the Special Master, for reviewing all exempt positions at the State agencies under the jurisdiction of the Governor. Even though this directive has been in place for a year, the Governor's Office continues to place candidates into 4d(3) exempt positions without looking or inquiring beyond what has been written in a position description. According to Ms. McAnarney, the Governor's Office has not changed its practice, nor had formal discussions about changing its practice, regarding hiring 4d(3) exempt employees to include any review of whether candidates are or will be performing duties justifying the 4d(3) exempt status. Rather, the Governor's Office relies on agency Human Resources staff to ensure that employees are performing the duties found in their position descriptions. Thus, even within the Governor's Office, there has been a failure to properly address this issue and no clear guidance given to its own employees, or agencies, regarding what can and should be done to avoid this problem.

According to Ms. McAnarney, she currently relies on the position description being updated by the agencies, and there is no way for her to know that incumbents are not doing the duties of the position descriptions unless the agency informs her of this. There are two problems with this process. First, Ms. McAnarney certainly could make an inquiry rather than simply relying on the paperwork. These positions and candidates are discussed between the Governor's Office and the hiring agency. In fact, Ms. McAnarney said that she talked with Mr. Schierholz about these positions a "handful" of times. It is not much of a stretch to make an inquiry as to whether the position description is accurate, as to duties and supervision. Second, it seems pretty clear that there is a problem with the accuracy of position descriptions. In fact, Ms. Hensey stated that

updating position descriptions has been “a struggle for years.” And yet, everyone, including Bureau personnel, the CSC, and the Governor’s Office, relies solely on these questionable documents to fill exempt positions.

There has not only been a lack of direction within the Governor’s Office but also a lack of direction given by the Governor’s Office to its agencies, particularly CMS. Exempt employees not performing exempt duties may not have been a significant concern in the past, but certainly after the publication in August 2014 of the OEIG’s report (No. 11-01567) in the IDOT Staff Assistant investigation, the existence of this issue was brought to light. Not only was the issue raised in that case, but the Governor’s Office was brought into the *Shakman* lawsuit and the Special Master has been working with the Governor’s Office on this issue since late 2014. Of course, the issue initially was limited to the review of IDOT, an agency under the jurisdiction of the Governor, but since November 2016, the Special Master’s responsibility was expanded to include a review of all exempt positions of all State agencies under the jurisdiction of the Governor. Even with the awareness of the issue, this problem still continues. The Governor’s Office has continued to place or approve the hiring of employees into exempt positions who are then not conducting exempt work. As discussed above, this problem stems, at least in part, from a management failure and that failure ultimately is the responsibility of the Governor’s Office. The Governor’s Office is ultimately responsible for providing proper direction to agencies within its jurisdiction. For these reasons, the OEIG is making a finding against the Governor’s Office for mismanagement based on its failure to ensure that 4d(3) exempt employees were doing exempt work.

## V. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

- **FOUNDED** – CMS employed Regional Client Managers who were not performing the duties necessary to justify a 4d(3) exempt status.
- **FOUNDED** – Former Deputy Director Schierholz engaged in mismanagement by failing to ensure that Regional Client Managers performed 4d(3) exempt duties and to identify that the 4d(3) exempt status was inappropriate for the Regional Client Manager position and address the matter.
- **FOUNDED** – Deputy Director Potts engaged in mismanagement by failing to ensure that Regional Client Managers performed 4d(3) exempt duties and to identify that the 4d(3) exempt status was inappropriate for the Regional Client Manager position and address the matter.
- **FOUNDED** – Deputy Director Hensey engaged in mismanagement by failing to ensure that Regional Client Managers performed 4d(3) exempt duties and to identify that the 4d(3) exempt status was inappropriate for the Regional Client Manager position and address the matter.

- **FOUNDED** – Director Hoffman engaged in mismanagement by failing to ensure that Regional Client Managers performed 4d(3) exempt duties and to identify that the 4d(3) exempt status was inappropriate for the Regional Client Manager position and address the matter.
- **FOUNDED** – The Office of the Governor engaged in mismanagement by not ensuring that candidates they approve for 4d(3) exempt positions are actually hired to do exempt work.

The OEIG recommends that Governor's Office and CMS take whatever action it deems appropriate with regard to the findings made against particular employees.

The OEIG also recommends that both the Governor's Office and CMS:

- take appropriate action to ensure that its exempt employees are performing exempt work to justify its exempt classification;
- take immediate steps to ensure that State employees are aware of and trained on identifying this issue; and
- examine the role of CMS Personnel staff to ensure that they provide appropriate support, and understand their role in identifying and assisting on issues raised in this report.

And finally, the OEIG notes that two times during this investigation, the OEIG was provided incomplete information in response to its requests for documents. In both instances, the lack of documents provided impacted and delayed this investigation. Rather than delay the investigation further to determine the cause of the incomplete documents, the OEIG strongly recommends that CMS review with its employees the importance of properly complying with the OEIG pursuant to the State Officials and Employees Ethics Act, 5 ILCS 430/20-70.

Date: December 21, 2017

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**Edward Mroczkowski**  
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Investigator #160



**Office of Executive Inspector General**  
**for the Agencies of the Illinois Governor**  
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**AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY  
RESPONSE FORM**

Case Number: 15-02180

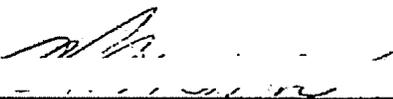
Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

We will implement some or all of the OEIG recommendations but will require additional time to do so.  
We will report to OEIG within 30 days from the original return date. (*Friday, February 9, 2018*)

We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

  
\_\_\_\_\_  
Signature

Office of the Governor, Ethics Officer and  
Associate General Counsel  
Print Agency and Job Title

Christina McClernon  
Print Name

January 9, 2018  
Date



## OFFICE OF THE GOVERNOR

JRTC, 100 W. RANDOLPH, SUITE 16-100  
CHICAGO, ILLINOIS 60601

BRUCE RAUNER  
GOVERNOR

**CONFIDENTIAL**

February 23, 2018

Margaret A. Hickey  
Executive Inspector General  
Office of Executive Inspector General  
69 West Washington, Suite 3400  
Chicago, Illinois 60602

**Re: OEIG Complaint Number #15-02180 Response to Final Report**

Dear Executive Inspector General Hickey,

This letter is in reply to the Office of Executive Inspector General ("OEIG")'s Final Summary Report ("Final Report") to the Governor's Office ("Governor's Office") in matter #15-02180. With the issuance of this Final Report, the OEIG determined that no further investigative action is needed, and this case is considered closed. The OEIG asked the Governor's Office to reply to the Final Report by listing all actions the Governor's Office has taken to address the recommendations the OEIG made relative to the investigation.

Governor Rauner's administration is committed to reforming the hiring process and eliminating improper political patronage hiring that has plagued Illinois for decades, and has worked toward that goal for three years. In the context of the *Shakman* case, the Governor's Office has worked closely with the Illinois Department of Transportation, the Court, the Court-appointed Special Master, and the OEIG's Division of Hiring and Employment Monitoring to address longstanding political patronage issues at that agency and, more recently, at all agencies under the Governor's jurisdiction. As the OEIG knows, we have made substantial progress in that effort. The Governor's Office was understandably frustrated to learn that, while this extensive work was underway to identify and address problematic positions, the seven Regional Client Manager positions were neither escalated to it nor to the agency director and that the OEIG expended nearly two years of effort to investigate them. Had we learned about the problem when you did, we would

have addressed it promptly by discharging the employees and abolishing the seven positions, which is what we did when we eventually learned. In the future, if you learn of any alleged mismanagement during our administration that can be resolved if brought to the attention of leadership more promptly, please pay us the courtesy of letting us know so we can correct the problem sooner rather than later.

The Governor's Office reviewed the Final Report and the investigatory materials furnished to it by the OEIG and responds as follows. First, to put in perspective the OEIG's findings and recommendations regarding mismanagement of seven employees at an agency, this Response begins with background regarding broader hiring reforms undertaken to date. Second, the Response sets out steps the Governor's Office and the Department of Central Management Services ("CMS") took upon discovery of the problem with the Regional Client Manager positions to address the immediate issue. Third, the Response addresses the findings of the Final Report. Fourth, this Response explains additional efforts underway to address the deeper root of this situation more broadly, and which will be a critical part of implementing the Final Report's recommendations. Fifth, the Response addresses each of the four recommendations from the Final Report and the specific action taken in relation to each.

I. **Historical hiring practices and efforts to reform them over the past three years provide important context for understanding the seven positions raised in the Final Report.**

Historically, most of the improper hiring in the State has been into job-protected positions. That practice is particularly problematic because it enables one administration to saddle its successor with employees loyal to the predecessor. Trying to solve that problem was our top priority for hiring reform. More recent efforts, particularly over the past year, began looking at at-will positions, including 4d(3) exempt positions. While those efforts are not yet complete, they are an important step in reforming an entrenched, decades-old hiring problem.

A. **Elimination of *Rutan* Exemptions from Job-Protected Positions**

1. **At IDOT**

The Staff Assistant position at the Illinois Department of Transportation ("IDOT") underscores the pervasiveness of the State's hiring problem and the persistence necessary to address it. Prior administrations created and filled more than 250 Staff Assistant positions. Those positions had been deemed "*Rutan* exempt," meaning they could be filled outside the competitive hiring process and an individual's political or policy views could be considered. By the time Governor Rauner took office, many of the Staff Assistants had moved on to other jobs. But our administration inherited some of them. Because they were protected by a collective bargaining agreement and were the plaintiffs in a pending lawsuit, it took us well over a year to settle the lawsuit, layoff the remaining Staff Assistants, and abolish the positions. IDOT now has no Staff Assistants and no Staff Assistant positions.

Other positions at IDOT had similar problems. They included Safety Issues Analysts, Local Community & Safety Liaisons, Project Managers, and certain Assistants to Bureau Chiefs. The positions were deemed *Rutan* exempt, but the employees in those positions – all of whom were

holdovers from a prior administration – were not performing exempt duties. Our administration at IDOT discharged the employees who had no job protection, laid off the ones who had bargaining-unit job protection, and abolished the positions.

With the approval of the court-appointed Special Master in the *Shakman* case, the Governor's Office and a leadership team at IDOT also reviewed every remaining *Rutan*-exempt position at IDOT to assess the validity of the exemptions. Prior administrations had created approximately 450 *Rutan*-exempt positions at IDOT. Our review team read the job description for each of these positions, spoke with the employees who filled or supervised these positions about the actual duties, and concluded that only about 160 of the positions genuinely qualify for the exemption. We shared our conclusions with the Special Master, who agreed with most of our assessments but noted, as we had, that a few of the positions have job protection. A final "Exempt List" at IDOT now awaits the determination of which, if any, positions on the preliminary list must be deleted because they gain or retain job protection.

Those job-protection determinations depend mostly on which of the listed positions will remain exempt from the State's Personnel Code under a statutory provision that excludes "technical and engineering staff" at four State agencies under the Governor's jurisdiction. (See 20 ILCS 415/4c(12) and 3105/8.) The "technical" exemption for IDOT positions creates a loophole that enabled prior administrations to create hundreds of positions such as Staff Assistant that did not require technical skills. The easiest way to close that loophole is to adopt a reasonable definition of "technical." So far as we can tell, the State has never defined the term. We have now reached agreement with the Special Master on a definition. To keep the definition air-tight, we will list in it the specific job classifications or titles that fit the definition. We are in the middle of the labor-intensive process of reviewing positions at IDOT and the other agencies to identify which positions require technical or engineering skills. When we reach final agreement with the Special Master, we will ask the *Shakman* court to adopt our definition as part of our resolution.

## **2. Beyond IDOT**

The Staff-Assistant situation at IDOT teaches a valuable lesson which we understood when Governor Rauner took office: *Rutan*-exempt positions should not be in collective bargaining units. So, soon after taking office, we froze all hiring into such positions throughout State government and abolished more than 400 *Rutan*-exempt, bargaining-unit positions that were vacant and unnecessary. But the freeze also put operational strain on some agencies. We searched for a solution and found that some of the positions did not require performance of *Rutan*-exempt duties. The Governor's Office and the Bureau of Personnel at CMS began a systematic review of the validity of the *Rutan* determinations. Courts have repeatedly ruled that *Rutan* determinations consider only "the powers in the office . . . even if the employee never actually exercises those powers." (See, for example, *Hagan v. Quinn*, 867 F.3d 816, 825 (7<sup>th</sup> Cir. 2017) (quoting *Embry v. City of Chicago*, 701 F.3d 231, 236 (7<sup>th</sup> Cir. 2012)).) Nevertheless, we reviewed the duties set forth in position descriptions and questioned the employees and their supervisors to learn if the employees were performing exempt duties. Upon learning that certain bargaining-unit positions

at the Illinois Department of Labor and the Illinois Department of Natural Resources did not require performance of exempt duties, CMS removed the exemption from those positions.

In November 2016, we suspended our agency-by-agency review of *Rutan*-exempt positions when the Court in the *Shakman* case decided that the authority of the Court-appointed Special Master should expand beyond IDOT to all agencies under the Governor's jurisdiction. We quickly reached agreement with the Special Master that all positions under the Governor's jurisdiction that have job protection – under either a collective bargaining agreement or the Personnel Code – should not be *Rutan* exempt. Due to that agreement, we directed that more than 2,000 job-protected positions that were formerly *Rutan* exempt would be subject to a competitive, non-political hiring process. In addition, CMS discontinued its 25-year-old process of making *Rutan* determinations. Those determinations will be made in collaboration with the Special Master. For now, any position with job protection is to be considered "*Rutan* included."

### **B. Review of *Rutan*-Exempt Positions with No Job Protection**

The agreement regarding protected positions turned much of our attention to positions that have no job protection. The largest group of these positions is the approximately 900 positions that, over the years, the Illinois Civil Service Commission has found to be exempt from the job protections of the Personnel Code, pursuant to Personnel Code subsection 4d(3); the positions are therefore at will. These positions are an important tier of positions that bring individuals who are aligned with the policy views of an administration into roles where they can lead, shape, and implement policy initiatives. By statute, the 4d(3) exemption applies only to positions that "involve either principal administrative responsibility for the determination of policy or principal administrative responsibility for the way in which policies are carried out." (Quoting 20 ILCS 415/4d(3).) Because of this policy-related role, positions that genuinely qualify for the 4d(3) exemption should also be "*Rutan* exempt." An important feature of such positions is that the employees in such positions are "at will," meaning they serve at the will of the Governor and can be fired for cause or no cause. A new administration can dismiss all the incumbents in 4d(3) positions and fill the positions with his or her own people. Of equal importance, unqualified or underqualified employees in 4d(3) positions can be fired at will. So the risk of mistakes in hiring is less than with job-protected positions. The jobs are not permanent, and therefore problems with 4d(3) exempt positions, like the employees, are not permanent.

When we began reviewing 4d(3) positions, we relied on the Civil Service Commission's determinations, as well as the numerous court rulings that *Rutan* determinations consider only the "powers inherent in a given office, as opposed to the functions performed by a particular occupant of that office." (See *Hagan, id.* (quoting *Tomczak v. City of Chicago*, 765 F.2d 633, 640 (7<sup>th</sup> Cir. 1985)).) Our confidence in that view is reflected in our "Goldilocks proposal." We suggested the Special Master sample the 4d(3) positions at three agencies – one big, one small, and one medium. She accepted our suggestion, which we expected would obviate the need for her to review all 900 or so 4d(3) positions and would therefore save substantial time and money.

The sampling proved unsatisfactory. The Special Master did not question the *Rutan* exemption for positions such as Chief of Staff and General Counsel, but the paperwork for some of the lower-level positions at the sample agencies raised enough questions for the Special Master to request

that the agencies either verify their belief that their 4d(3) positions are properly *Rutan* exempt or flag positions that may have been improperly designated *Rutan* exempt. That request led to the May 1, 2017, Agreed Order in the *Shakman* case, which required the Governor's Office to, among other things, provide a list of 4d(3) positions it believes should be *Rutan* exempt.

That agreement led in turn to a position-verification process. This process required agency directors and other leaders to review the *Rutan*-exempt position descriptions with each incumbent (or the position's supervisor in the case of vacancies) and to verify on a separate Verification Checklist that each such position description accurately describes the duties for which the position is responsible. The Verification Checklist form, which the Special Master helped draft and approved, did not ask agencies to flag improper *Rutan* designations. Rather, it asked them to flag positions in which incumbents were not responsible for performing their described duties. Some agency leaders, including the Personnel Liaison for the Bureau in which the seven former Regional Client Managers worked, nonetheless did flag improper *Rutan* designations. On November 3, 2017, CMS Bureau of Property Management Personnel Liaison Brian Collins signed the Verification Checklists for those seven positions, left blank the section for confirming the accuracy of the position descriptions, and inserted in handwriting that the position descriptions needed to be clarified. Had that clarification process continued, it would have brought to our attention the problem with the positions detailed in the Final Report, which would have resulted in discharge of the incumbents and elimination of the Regional Client Manager positions.

Instead, the problem came to our attention on November 8, 2017, due to the OEIG's interview of an employee of the Governor's Office. The Governor's Office notified CMS Acting Director Michael Hoffman who, as detailed further below, promptly investigated, determined that the employees were not responsible for performing exempt duties, and issued an order to discharge the employees in those positions and abolish the positions. The positions were abolished effective January 1, 2018.

**II. The Governor's Office and CMS evaluated the Regional Client Manager positions and acted to eliminate them less than a month after the Governor's Office and the CMS Director learned of the problem.**

The Governor's Office learned that the Regional Client Manager positions within the Bureau of Property Management at CMS were occupied by individuals who allegedly were not performing the duties of the 4d(3) exempt positions on November 8, 2017, when the OEIG interviewed Governor's Office Manager of Human Resources Office Operations Judith McAnarney.

That same day, the Governor's Office undertook to gather information about these positions. In doing so, the Governor's Office learned that CMS Deputy Director Hensey had been aware of the issue with the Regional Client Manager positions for months but had neither undertaken any effort to address the discrepancy between the position descriptions and the work being performed nor escalated the issue to her supervisor, CMS Director Hoffman. Similarly, Assistant Director Markus Veile and Deputy Director Joshua Potts explained that Deputy Director Potts, who had been in the role for six months and who we now know was interviewed more than a month prior, did not yet know for certain what the individuals in these positions, who reported to him on the organization chart, did as compared to their written position descriptions. After these

conversations, Governor's Office Special Counsel Joe Hartzler and Deputy General Counsel Jill Hutchison escalated the issue to CMS Director Hoffman and within the Governor's Office that same day. CMS and the Governor's Office then quickly worked together to address these positions.

Over the next two weeks, CMS and the Governor's Office undertook to understand what these individuals were doing and whether the duties outlined in the job descriptions were being done by other employees or were no longer needed by the agency. With the assistance of CMS internal personnel staff and others, the group gathered and reviewed: multiple revisions of the job descriptions; hiring paperwork and job history for the individuals who held the Regional Client Manager positions at the time of the investigation; historical information about the positions and the incumbents who were in the positions before these individuals were hired; and evaluations for the individual Regional Client Managers. The Governor's Office learned that these positions predated the administration, were all occupied by other individuals when the Governor took office in 2015, and that CMS under our administration had transferred some of the people into the Regional Client Manager positions from other 4d(3)-exempt positions to which they had been appointed by prior administrations. CMS staff contacted the individuals' functional supervisors to better understand what they were doing, and CMS considered whether there was an operational need for the actual duties in the job descriptions now or in the near future.

Based on that information, the Governor's Office and CMS concluded that the Regional Client Managers were not doing the duties in the job descriptions. CMS also determined that the described duties were not needed, and therefore the positions themselves were unnecessary.<sup>1</sup> CMS and the Governor's Office decided to abolish the Regional Client Manager positions.

On December 5, 2017, less than a month after it was brought to his attention, CMS Acting Director Hoffman directed the Bureau of Property Management and the Bureau of Personnel to notify the Regional Client Managers that the positions would be abolished effective January 1, 2018, and that the employment of incumbents in these positions would be terminated. On January 1, 2018, the positions were in fact abolished, and the six incumbents' employment was terminated.

### **III. The Governor's Office received the Final Report on December 21, 2017.**

In the Final Report, the OEIG concluded there was reasonable cause to issue the following findings:

- (1) CMS employed Regional Client Managers who were not performing the duties necessary to justify a 4d(3) exempt status.
- (2) Former Deputy Director Schierholz engaged in mismanagement by failing to ensure that Regional Client Managers performed 4d(3) exempt duties and to identify that the 4d(3) exempt status was inappropriate for the Regional Client Manager position and address the matter.
- (3) Deputy Director Potts engaged in mismanagement by failing to ensure that Regional Client Managers performed 4d(3) exempt duties and to identify that the 4d(3) exempt status was

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<sup>1</sup> As explained below, one of the employees in a Regional Client Manager position was performing needed duties from another nominally 4d(3)-exempt position that was then vacant. He was transferred to that other 4d(3)-exempt position until a now-vacant, non-exempt position with those duties can be filled.

- inappropriate for the Regional Client Manager position and address the matter.
- (4) Deputy Director Hensey engaged in mismanagement by failing to ensure that Regional Client Managers performed 4d(3) exempt duties and to identify that the 4d(3) exempt status was appropriate for the Regional Client Manager position and address the matter.
  - (5) Director Hoffman engaged in mismanagement by failing to ensure that Regional Client Managers performed 4d(3) exempt duties and to identify that the 4d(3) exempt status was inappropriate for the Regional Client Manager position and address the matter.
  - (6) The Governor's Office engaged in mismanagement by not ensuring that candidates they approve for 4d(3) exempt positions are actually hired to do exempt work.

The Governor's Office reviewed the Final Report and the investigatory materials furnished to it by the OEIG. The Governor's Office accepts the first four findings. To the extent that failure to detect that seven employees (out of CMS's more than 720 employees) in exempt positions four levels beneath him were not performing exempt duties constitutes mismanagement by the agency director with ultimate agency authority over those positions, the Governor's Office accepts the fifth finding. With regard to the sixth finding, the Governor's Office acknowledges it approved proposed 4d(3) exempt hires by agencies, including the hiring of the seven Regional Client Managers after CMS interviewed them to assess their qualifications and to determine whether to offer each a position within CMS. The Governor's Office disagrees with the assumption that it bears management responsibility for ensuring that individual agency employees are being hired by agency management to perform exempt duties; however, the Governor's Office can and will establish a process to exercise additional oversight and ensure that agencies hire qualified candidates to be responsible for exempt duties.

Based on the findings, the OEIG made four recommendations to the Governor's Office and CMS:

- (1) Take whatever action it deems appropriate with regard to the findings made against particular employees.
- (2) Take appropriate action to ensure that its exempt employees are performing exempt work to justify its exempt classification.
- (3) Take immediate steps to ensure that State employees are aware of and trained on identifying this issue.
- (4) Examine the role of CMS Personnel staff to ensure that they provide appropriate support, and understand their role in identifying and assisting on issues raised in this report.

The Response addresses broader efforts now underway and each of the four specific recommendations from the Final Report in turn.

IV. **The lingering Regional Client Manager positions are a symptom of broader cultural and systemic challenges, and they reiterate the need to improve personnel and compliance supports and to conduct a systematic evaluation of 4d(3) positions that goes beyond just determining whether they are "Rutan exempt."**

While the particular positions at issue were quickly resolved, the Final Report and its recommendations highlight an underlying issue that requires further attention: a sense from many individuals interviewed, including individuals in key personnel functions, that it is not their responsibility to ensure that State employees are performing the duties in their job descriptions, to

revise job descriptions that are inaccurate, or to identify when a 4d(3) exempt position is unwarranted or improper. This attitude bleeds over into a lack of attention to completing the hiring paperwork and evaluations that could serve as an important check on these issues. Although these systemic problems are holdovers from decades of byzantine hiring practices and a longstanding culture of looking the other way when there are underperforming employees, CMS and the Governor's Office will continue to take steps to change this culture and to improve hiring processes.

To make this change, the following broader initiatives are now underway. These changes will take considerable time to implement, but they are necessary, and the Governor's Office and CMS are committing the resources and leadership to make them happen. Reflected in these actions is an emphasis on setting a tone of accountability for all who hold, fill, or touch a *Rutan*-exempt position.

First, CMS leadership and the Governor's Office are working to build a more robust CMS Personnel Bureau and strong leadership at the top of the Bureau to ensure that issues are identified and escalated. For months, CMS's Bureau of Personnel has suffered from a lack of manpower, making it that much more challenging to be responsive and to effectively manage personnel issues, especially in the current, ever-changing landscape. Currently, the Deputy Director of Personnel (formerly held by Deborah Hensey) and the Rutan Compliance and Administration Supervisor (formerly held by Denise Connelly) positions are vacant, and both of those roles are essential. Filling these positions remains a high priority and ongoing effort at both CMS and the Governor's Office. As part of this effort, Sarah Kerley, a former OEIG investigator and long-time State employee, has been appointed to the Assistant Director role formerly held by Markus Veile. The Bureau of Personnel will report to Assistant Director Kerley, and she is leading the effort on the CMS side to address the issues raised by this Final report and to implement the two other initiatives below.

Second, a thorough review of all current 4d(3) positions has begun in collaboration between the Governor's Office and CMS. We undertake this review in part because we now recognize that the initial position-description review and verification-checklist process with the Special Master in the *Shakman* case did not provide all the information necessary to take further action on positions that may be problematic. We also acknowledge that not every director or supervisor who completed the verification form did so as carefully as he or she should have. Moreover, even if all had been done accurately, more information is needed than what the verification form requested.

The planned review of 4d(3) positions will involve a comprehensive look at the 4d(3) positions that exist on paper and, where they are filled, whether the individuals in those positions are doing the duties in the position description, as well as whether the reporting relationships are accurate. It will include input from employees to verify that they are doing the jobs described (or how their actual duties differ) and input from supervisors to verify the work being done by their reports and to confirm that they are actually supervising the people indicated on the org chart. The provision of this information will all be signed for on penalty of discipline and even termination to promote individual responsibility and accuracy. The results will be reviewed by both CMS and the Governor's Office to identify and address problematic positions. This one-time review should weed out both positions that are no longer needed and individuals who are not doing the jobs they

were hired to do. If terminations are necessary to correct historic or systemic problems and to implement needed hiring reforms, as they were in the case of these seven positions, those types of actions may be taken in consultation with agency leadership. CMS and the Governor's Office currently are revising drafts of the forms to account for feedback from the initial phase and are poised to implement it throughout CMS, which has a high number of 4d(3) positions relative to other agencies. The plan is to complete other state agencies on a rolling basis.<sup>2</sup>

Third, the lack of ownership of the Regional Client Manager positions, the difficulties encountered in verifying information for the *Shakman* case, and a lack of clarity among the agencies about the appropriate treatment of exempt and formerly-exempt positions all point to a need for a centralized personnel Compliance and Training Unit. Ideally, such a unit would be outside the day-to-day workflow of CMS's Bureau of Personnel and individual agency or CMS Bureau of Personnel staff, and in addition to and working in a complementary way with the OEIG's Hiring and Employment Monitoring Division. The planned role of the Compliance and Training Unit would be two-fold: (1) a training and education function that would be responsible for providing clear, written guidance and definitive direction to both agency personnel directors and CMS personnel; and (2) a defined monitoring role in verifying whether position descriptions remain accurate and individuals are performing the expected duties, including follow-up with employees, supervisors, and others where there are indications that the position descriptions may require revision or are no longer appropriately be 4d(3) exempt, or where the particular employee is failing to perform the exempt duties. Standing up a Compliance and Training Unit within CMS that is aligned to personnel issues requires, among other things, new positions that require time to create and hire.

Addressing this problem requires a culture change that cannot occur overnight, but can start with facilitating a culture of compliance and clear messaging about responsibilities and expectations.

#### V. Response to specific recommendations in the Final Report.

##### **Recommendation 1: Take whatever action it deems appropriate with regard to the findings made against particular employees.**

The Governor's Office accepts and agrees with the recommendation.

Regarding the Regional Client Managers, on December 5, 2017, before the issuance of this Final Report, the six employees who remained in those positions were informed that the positions would be abolished effective January 1, 2018. Those positions were abolished and the six individuals' employment was terminated. The seventh Regional Client Manager, Bradley Hermes, had been

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<sup>2</sup> This thorough review of 4d(3) positions is similar to what needs to occur more broadly in the *Shakman* case to develop an Exempt List for all *Rutan*-exempt positions. The Governor's Office's hopes that the Special Master will allow these efforts to proceed together, as the Governor's Office recognizes an urgent need to assess positions through other lenses in addition to whether they are appropriately exempt. However, the Special Master informed the Governor's Office on February 20, 2017, three days before this Response was due, that it recommends against conducting this planned review and prefers to follow a different process that would involve discussions by CMS and the Governor's Office with the agencies and a subsequent job audit of some positions. The Governor's Office is working to resolve this issue with the Special Master so that a meaningful review can get underway quickly and appropriate action can be taken on problematic positions.

using AutoCAD to design floor plans and accommodate space needs for agencies. CMS concluded it had an operational need for such work and no other employee could perform it. CMS also had a vacant 4d(3) position within the Bureau of Property Management that was responsible for space planning. So, CMS moved Mr. Hermes into that position with the approval of CMS's former Assistant Director before the issuance of the Final Report. As part of a closer look at positions in the Bureau of Property Management and on further review of his new position, Director Hoffman concluded that the duties of Mr. Hermes's new position are operationally necessary but not appropriately 4d(3). He also found that the duties could, and should, be performed by a non-exempt, job-protected position that has been vacant for some time. Therefore, Mr. Hermes was informed that his current position will be abolished and that his employment will be terminated as soon as the non-exempt position can be filled. The Code-protected position that will perform those duties has been posted, with the goal of completing the hiring process as soon as possible. When that position is filled and the incumbent trained, the 4d(3)-exempt position that Mr. Hermes holds will be abolished.

Former Deputy Director Terry Schierholz retired on December 31, 2016, and no longer works for the State of Illinois.

Deputy Director Joshua Potts received a fourteen-day unpaid suspension related to his involvement in this matter. He has been formally counseled on his responsibilities to ensure that all of his employees, including those with 4d(3) exempt status, are executing the duties laid out in their published job descriptions. In addition, 18 direct reports are an excessive amount for one executive to manage properly. Management experts generally recommend somewhere between 6-12 direct reports for an executive. CMS's elimination of the Regional Client Manager positions brings Mr. Potts' number of direct reports from 18 to 11.

Deputy Director Deborah Hensey retired on December 31, 2017, and no longer works for the State of Illinois.

Director Michael Hoffman, as Acting Director of CMS, accepts ultimate responsibility for management within CMS and commits to ensuring that this type of problem does not happen in the future. Director Hoffman was actively engaged in addressing the Regional Client Manager positions once the issue was escalated to his attention. He spent considerable time working with the Governor's Office and Assistant Director Kerley to develop much-needed plans for moving forward with strengthening and effectively staffing the Personnel Bureau, conducting a thorough review of 4d(3) exempt positions, and setting up a compliance unit. Director Hoffman is working closely with the Governor's Office to identify highly qualified individuals to fill key leadership positions at CMS, to include in the Director's Office. Director Hoffman has informed the Governor that he intends to resign his position once these key leadership positions have been filled and initial corrective actions outlined in this response have been initiated.

The Governor's Office will work even more diligently with the Special Master and the *Shakman* plaintiffs to identify all *Rutan*-exempt positions under the Governor's jurisdiction and to adopt a *Rutan/Shakman* Exempt List. That list will not, by itself, solve the problem of appointing people who are not qualified to perform exempt duties. So, going forward, under Governor Rauner the Governor's Office will take a more structured role in managing the placement process for exempt

positions and will better communicate the expectations for those positions and the employees who hold them.

The Governor's Office will reinforce with the agencies the expectation that agency directors and personnel staff must ensure that selected candidates are qualified for the positions into which they are hired and have responsibility for the duties of the position. These positions are appropriately filled by individuals who share the Governor's policy perspectives and will be important to initiating and implementing an administration's policies and programs. At the same time, agency directors and leadership are in the best position to understand the operational needs of their agencies, specialized expertise that may be needed, and the fit with other employees in the agency. Once individuals are in the role, agency leaders are closer to the person's day-to-day work.

To accommodate both perspectives, the Governor's Office will continue to send agencies the resumes of individuals who appear qualified for exempt positions, knowing that agency directors bring the important perspective of expertise in their respective fields and awareness of the other skillsets and needs present at the agency. As they do now, agency directors and their senior leadership may continue to consider both those candidates known to share the administration's policy perspectives and other individuals identified by the agency for a given role.

After the agency selects a candidate for a particular exempt position, the agency will send the Governor's Office a form that: (1) attaches the position description; (2) attaches the resume and other application materials or interview notes considered by the agency in determining that the individual met the qualifications for the position; (3) includes a verification by the agency Director or a deputy-level individual that the candidate meets the qualifications for the position; (4) includes a verification by the direct supervisor of the position (which often will be a director, deputy director, or similarly senior individual), that the position description is accurate or, if revisions are needed, what revisions are being proposed, who within the agency is ensuring that the changes are made, and a date by which to send the Governor's Office the updated position description; and (5) includes a verification by the candidate that they have reviewed the attached position description and understand that they are responsible for the duties therein. The Governor's Office will not approve the placement of the individual, and he or she may not begin work, until that form is received and confirmed within the Governor's Office.

The Governor's Office will maintain a file for each filled position that includes these verifications. This file, and any subsequent notes regarding the position, can be made available to the OEIG's Hiring and Employment Monitoring Division and the new CMS Compliance and Training Unit.

**Recommendation 2: Take appropriate action to ensure that its exempt employees are performing exempt work to justify its exempt classification.**

The Governor's Office accepts and agrees with the recommendation.

Through cooperation with the *Shakman* litigation, State agencies, including CMS, had undergone a position-description verification process. Through this process, the position descriptions for the seven Regional Client Managers were identified as inaccurate. However, through examination of

the verifications completed, it became clear that the verifications alone did not provide sufficient information to critically assess whether exempt employees were performing exempt work.

To obtain more robust information from which to ensure that all exempt employees are, in fact, performing exempt duties, the Governor's Office and CMS are poised to conduct a more thorough review of all currently exempt positions, starting with CMS. Completing this review will take several months and is a substantial undertaking. Moreover, because neither the Governor's Office nor CMS can go to work with each of the hundreds of exempt employees, it necessarily requires some reliance on each employee and supervisor to truthfully and accurately provide the requested information. From the initial round within the Bureau of Personnel at CMS, we believe that checking each position from the perspective of both employee and supervisor and requiring the review and signature to be made on penalty of discipline will accomplish that. CMS and the Governor's Office will together review the responses, assess whether positions are justifiably exempt, and follow up with the agency about positions that do not appear to be appropriately exempt or for which the information seems insufficient. The Special Master has suggested that a job audit of some positions will be warranted in addition to or in place of the proposed review process. As noted on page 9, the Governor's Office is in discussions with the Special Master in the *Shakman* case regarding any revisions to the review process before it begins.

This review is a one-time look at roles that often evolve over time and across administrations. Going forward, the verifications and documentation sent to the Governor's Office will help check that these positions are appropriately exempt when they are filled. The new Compliance and Training Unit and OEIG Hiring and Employment Monitoring Division also will be important collaborators for ensuring that these positions remain appropriately exempt, and that any positions that are no longer appropriately exempt will be addressed. In the future, the Governor's Office or agency leadership may identify a position that merits further inquiry and ultimately should be abolished or reclassified. The Governor's Office hopes the OEIG's Hiring and Employment Monitor and the Special Master also will advise if they identify such positions so that the Governor's Office and agency leaders can address those positions appropriately.

**Recommendation 3: Take immediate steps to ensure that State employees are aware of and trained on identifying this issue.**

The Governor's Office accepts and agrees with the recommendation.

First, within CMS, Director Hoffman has personally spoken to his Director's Office leadership, Deputy Directors, and other managers about this issue, including at their monthly leadership meeting on December 5, 2017. He has made it clear that Deputy Directors must ensure that their exempt personnel are reporting to the Deputy Director or another senior exempt position, that they are responsible for ensuring that job descriptions are accurate and up to date, and that individuals in positions are executing the duties in their published job description.

Second, in coming weeks, Assistant Director Kerley will be conducting training for CMS senior leadership. Topics to be covered include: ensuring the accuracy of position descriptions, the importance of completing timely performance evaluations, proper utilization of internal personnel

resources to provide guidance, and the proper handling of OEIG requests for documentation and inquiries from the Ethics Officer.<sup>3</sup>

Third, in connection with the review of all exempt positions statewide, the Governor's Office will host meetings with the following key groups of employees: all agency directors; all general counsel; and all agency directors of personnel. These meetings will explain why the review is underway, what constitutes an exempt position, and what exempt employees and their supervisors must do to support the review and to address this issue going forward. This process will reiterate the administration's commitment to ending improper political hiring and be followed by a written communication reiterating this information.

Fourth, as part of the proposed review, the Governor's Office and CMS will send each exempt employee and supervisor of an exempt employee an email summarizing the information that was presented to the groups above. It will include clear instructions about what to do to complete his or her part of the review as to the position he or she holds and as to the positions supervised.

Fifth, the Governor's Office wants to include additional information regarding positions in the new employee and annual ethics training that all employees under its jurisdiction take. As the OEIG formally issues the ethics training, the Governor's Office and CMS respectfully request that the OEIG incorporate a segment on employee and supervisor obligations in regard to position descriptions and with regard to the timely and accurate completion of performance evaluations (which contain a segment related to whether the employee is responsible for the duties in the position description) into the 2019 training.

**Recommendation 4: Examine the role of CMS Personnel staff to ensure that they provide appropriate support, and understand their role in identifying and assisting on issues raised in this report.**

The Governor's Office accepts and agrees with the recommendation.

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<sup>3</sup> The Governor's Office and CMS Director Hoffman were concerned by the limited responses to two OEIG requests for documents that were noted in the Final Report.

Regarding CMS, Director Hoffman reviewed both instances with CMS staff and believes that both are cases of sloppy procedures on the part of CMS, not due to any ill intent or desire to conceal information. In the first case, CMS, through a former Ethics Officer, failed to provide the most recent versions of position descriptions to the OEIG. The positions had been updated two months before the request, and the correct paperwork was inadvertently not provided to CMS's Ethics Officer. In the second case, CMS's Ethics Officer overly redacted or removed information that should have been provided to the OEIG. Director Hoffman has counseled the current Ethics Officer about this issue, as well as reiterating it to all Deputy Directors so they are aware of the importance and obligations of providing accurate and complete information in response to an OEIG request and cooperating with and prioritizing the Ethics Officer's requests for assistance.

Regarding agencies more broadly, the Governor's Office would like to reiterate to Ethics Officers and General Counsel the obligation to cooperate with OEIG investigations and provide recommendations regarding collecting and providing documents to the OEIG. To ensure that the information conveyed is accurate and reflects the OEIG's preferences, including what information Ethics Officers may share as they seek the cooperation of other employees in gathering documents, the Governor's Office would appreciate the opportunity to confer with the OEIG before doing so or to prepare any memo or presentation materials in collaboration with the OEIG.

CMS has adjusted its Director's Office portfolios to ensure appropriate senior department leadership is focused on this and other personnel issues. CMS now has one Assistant Director (Gubernatorial appointment requiring Senate confirmation) focused exclusively on personnel, labor, and administrative hearings, with a strong focus on working with the federal court appointed monitor and OEIG Hiring and Employment Monitoring Division. In that role, Assistant Director Kerley is leading CMS's involvement in the review of exempt positions and bringing critical expertise about the state's personnel system. Assistant Director Kerley has requested two additional positions in the Classification department at CMS to assist with implementing position description and classification changes that are likely to flow from that review.

As noted above, CMS is working to establish a Compliance and Training Unit within the Bureau of Personnel. Initial plans for this unit would have it led by a Compliance Officer and consist of two Compliance Monitors and two Trainers.

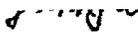
However, the development of a Compliance and Training Unit does not absolve all CMS Bureau of Personnel staff of the duty to be aware of the issues raised in this report and to identify them and support their resolution. As soon as a new Deputy Director of Personnel is in place, Assistant Director Kerley plans to meet with the Deputy Director, CMS Bureau of Personnel staff, and agency personnel directors to review the process for revising a position description and for how an exempt position should be reviewed. The State's personnel processes rely on written documentation, so they will develop a new flowchart that shows the role of CMS Bureau of Personnel staff within that process, both for CMS roles and for roles at other agencies, and that includes guidance about what makes a position qualify as exempt or not.

If you have any questions or require any further information with respect to this reply, please do not hesitate to contact me.

Sincerely,

Christina McClermon  
Associate General Counsel, Ethics Officer



By   
Jill M. Hutchison  
Deputy General Counsel and Chief Compliance Officer  
Office of Governor Bruce Rauner

cc:  
Lise Spacapan  
General Counsel  
Office of Governor Bruce Rauner  
JRTC, 100 W. Randolph St., Suite 16-100  
Chicago, IL 60601

Michael Hoffman  
Acting Director  
Central Management Services  
JRTC, 100 W. Randolph St., Suite 4-406  
Chicago, IL 60601



April 18, 2018

Response to OEIG Case #15-02180

Dear Executive Ethics Commission,

I am proud to have led the Department of Central Management Services, and its 750 employees, from January 2016 to March 2018. This role gave me an opportunity to work with a great team to improve the function of government at a statewide, enterprise level. The impact of our work at CMS reached far beyond our own agency, and into all agencies, boards, and commissions under the Governor as well as other State entities.

This impact includes extensive, ongoing efforts in the personnel realm. CMS has partnered with the Governor's Office, the federal court appointed Special Master, and the OEIG's Hiring and Employment Monitoring Division to eliminate improper patronage hires in agencies under the Governor. We have worked collaboratively and openly with all parties to address long standing practices in Illinois state government hiring to ensure that every Illinoisan has an equal opportunity to work for their state.

For decades, the state hiring and personnel system has been a mess. Previous administrations have put politically connected individuals into positions with civil service and/or union protections. We stopped that practice. For the first time, we are tackling the entire, convoluted, and ineffective personnel system. I have said from the start that it would be a messy process and would expose some warts. I'm proud that this administration has had the guts to do this.

Most of the employees referenced in the OEIG report were hired before I joined CMS. I did not work with these employees, four levels down on the organization chart from me, in the normal course of our work. As the Director, while I bear responsibility for everything my department does or fails to do, these facts limited my ability to uncover and resolve this situation.

Unfortunately, I did not learn that these seven CMS employees were not fulfilling the duties in their position descriptions until very late in the OEIG's investigative process. The situation was serious and needed to be addressed promptly. I did just that by abolishing the positions and terminating the incumbents within a month of learning of the issue in Fall 2017. Had I known about the situation earlier, I would have taken action at that time.

I say all this to simply make clear that this situation is not consistent with the goals or approach to personnel held by CMS or this administration. As the collaborative work to reform State hiring and to bolster the integrity of State personnel system continues, I am hopeful that problematic situations will be reported promptly to decision makers, giving them the opportunity to correct improprieties more quickly, especially when, as here, CMS and the administration are such willing partners in implementing lasting, positive change.

Thank you for this opportunity to share my response.



Michael Hoffman

RECEIVED

APR 19 2018

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

EXECUTIVE ETHICS COMMISSION

IN RE: OFFICE OF THE GOVERNOR )

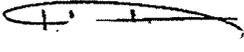
#15-02180

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked, the Commission will not make your response public if the redacted report is made public.

Below is my public response. Please make this response public if the summary report is also made public; or

Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

  
\_\_\_\_\_  
Respondent's Signature

4/13/2018  
\_\_\_\_\_  
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission  
401 S. Spring Street, Room 513 Wm. Stratton Building  
Springfield, IL 62706

Please see the attached sheet.

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\_\_\_\_\_



## OFFICE OF THE GOVERNOR

JRTC, 100 W. RANDOLPH, SUITE 16-100  
CHICAGO, ILLINOIS 60601

**BRUCE RAUNER**  
GOVERNOR

April 13, 2018

By E-mail and U.S. Mail

Illinois Executive Ethics Commission  
401 S. Spring Street, Room 513 Wm. Stratton Building  
Springfield, IL 62706

**Re: Response to OEIG Case Number #15-02180**

Dear Executive Ethics Commission,

In addition to the Response that the Office of the Governor submitted to the OEIG on February 23, 2018 and which the Office of the Governor requests that the Commission make public if the summary report is made public, the Governor's Office provides the following further response.

Throughout the first three years of his administration, Governor Rauner has demonstrated his commitment to changing the culture in state government and eliminating the improper patronage hiring that has plagued Illinois for decades.

Historically, most of that improper hiring was into job-protected positions. The time-worn practice in Illinois government enabled one administration to saddle its successor with the predecessor's political appointees.

In a major step to de-politicizing the State workforce, Governor Rauner abolished that practice. His action reduced by nearly two-thirds the number of exempt positions – from more than 4,000 to approximately 1,500 in a total workforce of 44,000 employees.

The Rauner Administration has prohibited job protection for these at-will, exempt employees to better protect the integrity of the hiring process. Exempt employees can no longer be offered union protection or Civil Service protection.

Eliminating these job protections also makes our Administration more adept and more efficient to address problems. When these seven positions were flagged, the Governor's Office took prompt steps to terminate the employees and the positions were abolished. We are also implementing additional oversight to ensure that agencies hire qualified candidates to be responsible for exempt duties.

The Rauner Administration takes its responsibilities seriously. Our actions convey a strong message to all agency directors and exempt employees: The Governor is committed to ending the culture of corruption. Further, he expects all his appointees to be high performers who strive daily to serve the residents and taxpayers of Illinois.

Respectfully,

A handwritten signature in black ink, appearing to read "Jill M. Hutchison". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Jill M. Hutchison  
Deputy General Counsel and Chief Compliance Officer  
Office of Governor Bruce Rauner

cc:

Lise Spacapan, General Counsel  
Christina McClernon, Associate General Counsel and Ethics Officer  
Office of Governor Bruce Rauner  
JRTC, 100 W. Randolph St., Suite 16-100  
Chicago, IL 60601

RECEIVED

APR 16 2018

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

EXECUTIVE ETHICS COMMISSION

IN RE: CENTRAL MANAGEMENT SERVICES )

#15-02180

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked, the Commission will not make your response public if the redacted report is made public.

Below is my public response. Please make this response public if the summary report is also made public; or

Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

  
\_\_\_\_\_  
Respondent's Signature

4-12-18  
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission  
401 S. Spring Street, Room 513 Wm. Stratton Building  
Springfield, IL 62706

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CMS remains committed to its role as an engaged partner with the *Shakman* Special Master and the OEIG's Hiring and Employment Monitoring Division. In the coming months, the agency plans to overhaul and improve State hiring processes and identify positions that are appropriately exempt from competitive selection. To this end, CMS hired Sarah Kerley as Assistant Director. Kerley has a varied and lengthy experience with State personnel matters and investigative background with the OEIG. On February 1, 2018, Kerley began her new role with CMS with primary focus on the State's coordination with *Shakman* participants, strengthening CMS's ongoing compliance efforts, providing more and more consistent guidance to agencies about appropriate conduct when navigating the hiring process, and development and implementation of a comprehensive employment plan.

CMS shares the Governor's goal of identifying improperly-designated *Rutan*-exempt positions and swiftly correcting any misuse of existing *Rutan*-exempt positions. All CMS Senior Managers and Personnel Liaisons have undergone training reinforcing their responsibility in ensuring that all position descriptions accurately reflect the duties to be performed by the position, that all employees are performing the work of their position descriptions, and that all supervisors are accurately evaluating their subordinates in an accurate and timely fashion.

Assistant Director Kerley continues to improve communication both within CMS and between CMS and other State agencies to prevent misuse of *Rutan*-exempt positions, to eradicate any circumstances that violated personnel policies, and to move the State's coordination and compliance efforts forward. This communication not only seeks to change problematic processes but also to transform the culture surrounding treatment and scrutiny of *Rutan*-exempt positions in the State of Illinois.